

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

SPECIAL EXCEPTION

4834

VARIANCE

4834

DECISION

Application:	Gas Station, Food or Beverage Store, and Variance
Applicant:	RF Landover, LLC/Royal Farms #411
Opposition:	None
Hearing Dates:	October 6 and October 20, 2021
Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4694 is a request for permission to construct a Gas Station and related 4,649-square foot Food or Beverage Store on 1.72-acres¹ of an assemblage of land containing approximately 4.48 acres of land in the C-S-C (Commercial Shopping Center) Zone. The 1.72 acres consists of Parcels G-9, H and Part of K which are reflected on plats WWW 41 at Page 79, WWW 57 at Page 22, and NLPI 42 at Page 52.

Variance 4834 is requested because the Gas Station will be located less than 300 feet from a lot containing an outdoor playground, in contravention to Section 27-358 (a)(2) of the Zoning Ordinance. The subject property is located in the southwest quadrant of the intersection of Landover Road (MD 202) and Kent Town Place. It is further identified in the Statement of Justification as 7401 and 7415 Landover Road and 2500 Kent Town Place, Hyattsville, Maryland. The Statement of Justification also notes that the site is 4.49 acres. (Exhibit 1) The Special Exception Site Plan provides an address of 7415 Landover Road, Hyattsville, Maryland. (Exhibit 57)

(2) Staff recommended approval of the Special Exception, with conditions. (Exhibit 3)

(3) No one appeared in opposition at the hearings held by this Examiner.²

¹ Throughout the record, the exact number of acres varies (although always close to this number). As a condition of approval Applicant must double check and provide the correct "approximate" acreage and address for the subject property.

² There was no testimony taken at the October 6, 2021 hearing since Applicant requested a continuance to a later date. Accordingly, all references to the transcript refer to the October 20, 2021 transcript.

(4) At the second hearing I realized that what had been marked as Exhibit 29 was an exhibit for a different Application. That Exhibit has been removed and marked as “reserved” on the Exhibit list to avoid renumbering all subsequent exhibits. At the close of that hearing the record was left open to allow submission of additional evidence. Applicant submitted all of the information on October 20, 2021, and the record was closed at that time.

FINDINGS OF FACT

Subject Property and Surrounding Uses

(1) The subject property is triangular in shape and consists of three parcels within the Kent Village Shopping Center subdivision: Parcel G9 (.50 acre), Parcel H (.31 acre) and Part of Parcel K (approximately 1.06 acre). (Exhibit 63). It has frontage along Landover Road (MD 202), Kent Town Place, and Kent Town Drive (a right-of-way that was vacated pursuant to County Order and noted on Plat book NLP 143 Page 52). (Exhibits 57 and 58)

(2) The site is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because it contains less than 10,000 square feet of woodland and has no prior tree conservation plan approvals. (Exhibit 55) The subject property has an approved Natural Resources Inventory Equivalency Letter (NRI-046-2020) because it is not associated with any regulated environmental features, is not within the primary management area, and was granted the aforesaid exemption from the Woodland and Wildlife Habitat Conservation Ordinance.(Exhibit 20) The application is subject to the Landscape Manual and the Tree Canopy Ordinance. The Technical Staff recommended certain revisions to these plans to address nonconformance with both. (Exhibit 3, p. 12)

(3) For the most part the neighborhood proffered by the Technical Staff conforms to the property’s boundaries. (Exhibit 3, p. 4 and Exhibit 58, p. 3) This Examiner agrees with Applicant’s land planner that the boundaries should be slightly expanded. Accordingly, I find that the neighborhood boundaries are: Landover Road to the north and the properties along the northern boundary of Landover Road, including the Landover Metro Station; Hawthorne Street to the south; Martin Luther King Boulevard (MD 704) to the east; and Penn Line railroad to the west.

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

- | | |
|--------|--|
| North- | Landover Road (MD 202) and, beyond, multifamily dwelling uses in the R-18, C-S-C and C-O Zones |
| South- | Hawthorne Street and, beyond, multifamily dwelling uses in the R-18 Zone |

- East- Kent Town Place and, beyond, a Shopping Center and residential condominiums in the C-S-C Zone
- West- a Shopping Center in the C-S-C Zone

General Plan/ Master Plan/Sectional Map Amendment

(5) The subject property is located within an area governed by the 2014 Landover Metro Area 202 Corridor Sector Plan (“Sector Plan”) and Sectional Map Amendment (“SMA”). This Sector Plan included the following Revitalization Plan for the area that includes the subject property:

The area between US 50 and MD 704 on the south side of Landover Road contains smaller shopping centers and retail areas. Some of the commercial uses, such as the Kent Village Shopping Center and the retail uses west of Pinebrook Avenue are hidden from Landover Road by topography and trees. All of the shopping centers contain a significant amount of underutilized surface parking lots.

The South Landover Road Focus Area currently contains commercial land uses. The uses range from an auto body shop and gas station to fast food establishments and small local-serving businesses. In support of the long-term vision of the sector plan, the land use in the South Landover Focus Area should be changed to better support the long-term visions for the entire Landover area as a whole.

In the long-term, the South Landover Road Focus Area is envisioned as a mixed-residential area. The residential designation will be the dominant land use, but the mixed-use designation allows for other types of uses such as small-scale, neighborhood-serving commercial uses. The additional residential in this focus area supports the larger commercial component in the Dodge Park Focus Area.

(Sector Plan, p. 54)

(6) The 2014 General Plan (“Plan 2035”) places the property within the Established Communities. (Plan 2035, p. 18) The Plan notes that “established communities are most appropriate for context-sensitive infill and low-to medium-density development. (Plan 2035, p. 20)

Applicant’s request

(7) The subject property is a triangular-shaped assemblage of land that is currently improved with a Checker’s restaurant and Lenny’s Carry Out restaurant, and the remainder of the site (not within the boundaries of the Special Exception) primarily consists of parking. (Exhibit 17) Applicant intends to lease the subject property and is seeking the requested approvals in order to raze these two existing businesses and construct a new 4,649-square-foot Food or Beverage Store (with some indoor and

outdoor seating) and Gas Station, both t/a Royal Farms. The new Food or Beverage Store will be located to the south of the two existing Eating or Drinking Establishments and the gasoline pump islands with eight (8) multipurpose dispensers (“MPDs”) and canopy will be located parallel to Landover Road (MD 202). The property currently has four points of access from Landover Road (MD 202). Applicant proposes to close three of these and have one access from Kent Town Place and two from the private Kent Town Drive. Applicant provided elevations for the canopies, signage and screening enclosures, a photometric plan, Landscape Plan and architectural elevations for the entire development. (Exhibits 15 and 57) The subject property has approximately 277.05 feet of frontage along Landover Road, an arterial with a variable-width right-of-way that is approximately 115.2 feet in width at the site; and approximately 388.02 feet of frontage along Kent Town Place, a road with an ultimate right-of-way width of 70-feet at the site. There will be parking abutting the front and back of the Food or Beverage Store and along the perimeters of the site to ensure safe and efficient circulation. Applicant provided the truck circulation pattern on the Site Plan which was also prepared to foster safe and efficient circulation on site.

(8) Mr. Edward Steere, Senior Managing Director of Valbridge Property Advisors and accepted as an expert in the field of market analysis testified and prepared a Need Analysis for the proposed Gas Station and the Royal Farms Food or Beverage (“convenience”) Store. (Exhibit 16; T. 46) Mr. Steere explained that he first established a separate trade area for the Gas Station and for the convenience store. For the former he set an area bounded on the north by the US 50/I-95 interchange, on the east by the Capital Beltway, on the south by Brightseat Road and on the west by US 50. (T. 47) This trade area is one in which the majority of the community drives to work, where a large portion of the area is industrial, and wherein there is, roughly, a six minute or less drive time to a Gas Station. (T. 48-49) The witness noted there are 10 other Gas Stations within this trade area. (T. 48-49) Mr. Steere also calculated the estimated demand for gas within the trade area, as discussed below.

(9) The expert opined that consumers will not generally go out of their way to purchase items at a particular store since most convenience store goods are a static expense for all stores. However, he has found that consumers will go slightly farther to frequent a store that offer fresh foods (as Royal Farms does). He reduced the trade area for the convenience store to the following boundaries: to the north, the area just below the access ramp for MD 410, and residential area and Metro Station near Dodge Park; to the south, Columbia Park Road; to the east, Martin Luther King, Jr. Highway (MD 704) and; to the west, US 50. (Exhibit 16, p. 29; T. 54-55)

(10) After reviewing the type and number of gas stations and convenience stores in each trade area, respectively, the Need Analysis concluded as follows:

Valbridge believes that the proposed convenience store with gas will be more convenient and therefore necessary to the residential households in the neighborhood. We do not

believe that the proposed gas station will detract from or impair the health, morals, or welfare of residents in any conceivable way, given the considerable number of residential households and employment in the area as well as the significant volume of daily pass-thru traffic who are in need of expedient fuel and convenience store services. Recent industry surveys reveal that while the price per gallon is still one of consumer's top considerations when choosing a gas station, an increasing proportion of consumers are more likely to go out of their way to visit a certain brand of station which has the quality of in-store offerings such as fresh food and loyalty programs they value. This trend is likely to continue going forward as in-store sales numbers climb and more people report entering the store during their visit. Overall, we estimate total fuel demand in the trade area at approximately **18.14 million gallons** per year....

Our survey revealed ten existing gas stations in the subject's trade area. On average, trade area stations are estimated to supply 1.1 million gallons annually.... Throughout our survey we evaluated conditions that are important to the marketing of goods and services, such as clean, well-lit facilities, quality fresh food products, visibility and access from the highway and neighborhood, modern design and cover from the elements. Based on this analysis we found that for the majority, gas stations that populated this area followed a classic service station design with two or more service garage bays or were formatted as small kiosk/mini convenience stores. These stations are unlikely to draw the same volumes of customers as the subject site as further demonstrated by our estimates of annual fuel sales volumes which are slightly below average and result in an excess demand of roughly **6.3 million gallons** per year for the trade area.

We believe that only three trade area stations are realistically competitive with the subject as these stations offer both gas and diesel options and more modern convenience food options. The remaining trade area stations have little competitive advantage over one another in terms of the services they offer and benefit solely from the fact that they are well-positioned to capture traffic along commuter routes. On average, existing neighborhood stations do not meet modern consumer demands. Performance data from NACS and ITE traffic generation models reinforce that a modern convenience store such as the subject will generate more than double the customer traffic of the traditional and smaller gas stations....

Although there are other existing convenience stores in the neighborhood, there are none that offer the selection of fresh foods and fuel proposed on this site. All of the other stores are smaller and limited in scope of offerings. Industry trends show that a majority of drivers who purchased fuel are also entering the food [or] rawbeverage stores (52% in 2020 vs. 35% in 2015) and that younger consumers are likely to shop convenience stores daily, purchase healthy food offerings and base their fuel purchase decision on what they plan on purchasing inside the convenience store. The necessity or demand of the gas station creates a reasonable need for a food or beverage store, given the increase in sales for both product offerings when offered in unison. The establishment of a hyper convenience store with gasoline sales on the south side of Landover Road (MD-202) will provide a convenient and expedient service to the community....

Valbridge concludes, therefore, that [there is a] ... public need/necessity for the proposed Royal Farms [Gas Station and Food or Beverage Store]..., due to the facts presented

above. The site and use is 'convenient, useful, appropriate, suitable, proper or conducive' to the public in this area, by providing a single location for the purchase of fuel and a wide variety of food and convenience options. The store and [gas] station complement the surrounding retail character of the area and is positioned at one of the highest traffic volume locations along the MD-202 Corridor. This area is a mixture of residential, commercial and industrial uses and the proposed site has the unique benefit of being in close proximity to the Landover Metro Station/Park and Ride allowing it to serve pedestrian demand. Traveling to the site is unlikely to increase traffic on side roads or the distance traveled by residents/commuters on their standard daily journeys. The area has lacked commercial investment despite the new development of residential communities and the subject will be an attractive improvement over the existing commercial uses located at this site....

(Exhibit 16, pp. 2-4)

(11) Mr. Thomas Rosen, the Fuel and Environmental Leader for Royal Farms, was authorized to testify on its behalf. (Exhibit 37) He explained why Royal Farms chose to lease the subject property:

[W]e're a Maryland company so we build a lot of stores in Maryland. There is certain ... criteria that we look at like car count, the size of the property, the zoning of the property, certain other businesses and rooftops in the area. Also our location between 50 and 295 ... was very helpful in selecting this location. It's also on a corner with ... a controlled intersection, and the size of the property you know fits our... operation. So we also thought that ... we'd be a great addition to the community and fill ... a need and bring ... an offering that's not currently there....

We're going to repurpose an outdated property that's far outlived its usefulness. We're going to ... redevelop it with modern designs, like storm water management, new landscaping and the storm water management is going to provide water quality controls.... We're also going to provide motorists along 202 with other fuel and food options at competitive gas prices, [and] of course our world famous fried chicken. We'll increase the county tax base with our ... operation and provide [a] 24/7 convenience option for the residents of that community....

(T. 11-12)

(12) Ms. Emily Dean, a licensed civil engineer employed by Kimley-Horn and Associates, provided the following description of the subject property:

The subject property is located at 7415 Landover Road in Landover, Maryland and is made up of Parcels G, H and a portion of Parcel K in the Kent Village Subdivision. The subject property is bound by Landover Road or Maryland Route 202 to the north, Kent Town Place to the east, Kent Town Drive and the remainder of Parcel K to the south and west....

The site is currently occupied by a Checker's fast food restaurant with a drive-thru, outdoor

seating and associated parking, as well as a Lenny's Carryout restaurant with parking facilities. And then there is an area of open space on the southern portion of the property. I did note while I was there, there is significant grade change on site with the lowest area being towards the south of the site where the open space is located. There's also existing storm drain network, however [there] does not appear to be any existing storm water management on the site. There are also sidewalks around a majority of the existing site....

We are proposing to demolish both the Checkers and Lenny's restaurant and construct a 4,649[-]square[-]foot food [or] beverage store as well as eight multiproduct dispenser gas station. We'll also be installing underground fuel tanks and enclosed dumpster facility, parking areas and new sidewalk around the majority of the site. The proposed improvements will also include surface storm water management facilities for quality treatment as well as an underground storm water management facility for 100-year storm control. New storm drain, water, sewer, electric and gas utilities will also be installed to serve the site. And then landscaping will also be installed in compliance with the Prince George's County Landscape Manual....

The Site Plan complies with all the requirements [of Section 27-358(a)] except for the one that stipulates we need to have at least 300 feet between our property and any property with a school, playground, library or hospital....

[The dashed line that bisects the special exception boundary in the parking lot and Kent Town Place on the site plan] is the line that indicates the 300 foot setback from the property with the playground.... Within that area we are proposing the dumpster facility ..., a storm water management surface facility as well as a pylon sign.... The gas station facilities are located up on the northern portion of the site....

We modified this site to ensure that entrances were wide enough to accommodate the truck as well as the turning, the radii into the site at each distance were large enough to allow the trucks to move efficiently throughout....

(T. 16-18, 20-22)

(13) Ms. Dean also explained why the Applicant believed the Technical Staff erred in requiring all of its recommended conditions:

[Staff's recommended Condition 2]... requests that prior to certification the Section 4.10 schedule be replaced for Section 4.2 if Kent Town drive is a public right-of-way.] Kent Town Drive is a private right-of-way or private easement within Parcel K and so we have left the 4.10 schedule on the plan to show compliance with the private right-of-way section of the Landscape Manual....

[T]he plan that we submitted for review to staff did include Schedule 4.6 [for] Landover Road which is considered a historic roadway, so I believe [Condition 3] should also be removed....

[And in reference to Condition 1a] we included the total length of the frontage of the

property around Landover Road, Kent Town Place and Kent Town Drive in our calculation for the allowed freestanding signage on site. Because we are providing landscaping for Kent Town Drive we are treating it as a private street. We feel that it should be included in that calculation which then affords us two freestanding signs on site instead of just one....

[And Condition 1b referencing the Tree Canopy Coverage requirements,]We reviewed Section 25-128 (c) ... which permits redevelopment of previously developed sites to calculate the required Tree Canopy Coverage based on the limits of disturbance and not the overall area of the ... site or the parcel lines. So we revised our tree canopy coverage worksheet to reflect the limits of disturbance and then provided trees on site to comply with that revised requirement...

I believe the only change that was made to address the comments from staff was the revision of the tree canopy coverage schedule to change the ... area of analysis from the overall parcel area to the limits of disturbance. But no changes were made to the landscape and buffer schedules.

(T. 23-25, 79)

(14) Mr. Michael Lenhart, accepted as an expert in transportation planning, prepared a traffic impact analysis for the Application (Exhibit 31) and provided the following testimony summarizing his findings:

[T]he Zoning Ordinance identifies certain uses that require a traffic impact study.... This use does not require a traffic impact study[.] [H]owever, the guidelines do note ... that in cases where new traffic exceeds 100 vehicle trips per hour, applicants are encouraged, and may be requested, to provide a traffic impact study ... to ensure that applicant's agencies and public are aware of the impacts and to consider conditions that may be needed to protect surrounding properties or the general neighborhood as it relates to traffic issues.

And so this use does generate more than 100 peak hour trips but again an impact study is not specifically required and was never requested....

[W]e included all major intersections along Maryland 202 between US 50 and Maryland 704, [a] total of eight intersections along Maryland 202 and we also included site access points and local intersections along Kent Town Drive back to Kent Village Drive.

All of the study intersections operate at a level of service D or better under existing traffic conditions. And this site is located inside the Capital Beltway and the allowable threshold is up to and including a level of service E ... inside the beltway and all of the intersections under existing and future traffic conditions with and without proposed special exception will operate at acceptable levels of service. But the majority of the intersections operate at level of service D or better.... [T]he intersection of Maryland 202 and Kent Town Drive is projected to operate [at] level of service E with or without this proposed special exception. Again, that is acceptable. And this proposed development does not deteriorate that level of service, and all the unsignalized intersections are deemed adequate based

upon the unsignalized methodology that's required in the guidelines....

So the Transportation Planning Staff memo dated May 25th of 2021 made findings based upon our traffic study that all of the study intersections would operate at acceptable levels of service and the plan is acceptable and meets the findings required for a special exception per [S]ubtitle 27 of the Code. And the TPS transportation staff also noted that no adequacy test is required for a special exception, ... however they did look at the existing trips, the underlying trip cap and the proposed trips and they made a finding that the use would fit within the presumed trip cap for the underlying subdivision. The State Highway ...Administration also reviewed the traffic study and approved the study....

[T]he traffic impact study is not required and one was not requested, but the study that was proffered and offered by the applicant and approved by both state and Park and Planning Transportation staff, concurred that the study intersections will operate at acceptable levels and that the site will not have a significant impact on traffic operations....

[T]he agencies have agreed with the access points and approved the access points. We are consolidating the access on Route 202 and eliminating access points which improves the safety in and out of the site, and the access on 202, that has been reviewed and approved by the state. The county DPW had some questions about one, the original proposed access on Kent Town and we actually eliminated that access point to address their concerns and we have approvals from all operating agencies....

(T. 35-39)

(15) Mr. Mark Ferguson, accepted as an expert in the area of land use planning, testified in support of the Special Exception and Variance applications. He also submitted a land planning analysis that provided the following support for the Special Exception:

The proposed use for ... SE-4834 is the razing of the two existing eating and drinking establishments, and their replacement by a new convenience store and gas station. The new convenience store will be located to the south of the two existing buildings and the pump islands will be located parallel to Landover Road; eight MPDs are proposed.

The new facility will be provided with modern stormwater management using Environmental Site Design (ESD) techniques where only an obsolete oil/grit separator exists.

Three of the four existing entrances from Landover Road will be closed, with the remaining entrance being located to the west of the subject property's frontage, further away from the signalized intersection with Kent Town Place, providing greater safety. Additionally, the wide, unchannelized entrance from Kent Town Place will be improved to a modern channelized entrance, also providing greater safety....

(Exhibit 58, pp. 4-5)

(16) The analysis set forth a detailed explanation as to the Application's satisfaction of

all requirements for the two special exception uses set forth in Sections 27-317, 27-355 and 27-358, as well as its furtherance of the applicable purposes set forth in Sections 27-102 (general purposes for all zones), 27-454(a) (general purposes for all commercial zones) and 27-446(a) (purposes for the C-S-C Zone) of the Zoning Ordinance. (Exhibit 58, pp. 5-18)

(17) The subject property is approximately 230 feet from a 12.91-acre lot improved with the Kent Village Apartment complex. Unfortunately for Applicant, an outdoor playground is located in the center of the apartment complex. As a result, Applicant seeks a variance to the requirement in Section 27-358 (a)(2) that the Gas Station be located at least 300 feet from a lot on which a playground is located. Mr. Ferguson explained that the property is triangularly shaped and a narrow point on the southern corner of the subject property is only 229.7 feet from the northern edge of the Kent Village Apartments property. Section 27-328.01 of the Zoning Ordinance requires that all setbacks “be measured from the boundary line of the land for which the Special Exception is requested or approved, regardless of whether this boundary line is a lot, property, street, or other line.” As a result, a variance is required from Section 27-358 (a)(2) even though the gas station pumps, the Food or Beverage Store, and the outdoor eating area are at least 300 feet from the Kent Village Apartments lot, and nearly 700 feet from the playground which is located on the other side of the fenced open concrete Cattail Branch channel. (Exhibit 58, pp. 15, 17 and 18). Mr. Ferguson provided the following reasoning to support his opinion that the variance request satisfies applicable provisions of the Zoning Ordinance:

First of all, you have some exceptional shape, which is the triangular nature of the site and it's really the point of the triangle which is substantively unoccupied, which extends down into the 300-foot limit. So ... all of the actual activity whether it's for the convenience [store] or for the gas, is well outside of that area and were this property regularly shaped, ... we wouldn't be talking about this.

The second extraordinary condition, frankly, is the barrier of Cattail Branch, which separates the ... playground from the subject property as a barrier. So were the Kent Village Apartments to be developed today, that floodplain would be a separate parcel, separating apartments on the one side of Cattail Branch from apartments on the other. But because of the age of it, Parcel K just extends right across Cattail Branch leaving the eastern part within the dimensional limit whereas the playground on the western part, even though it's substantially separated nonetheless occupies the same piece of property. That wouldn't happen today, so that's an extraordinary situation or condition in my opinion....

[T]his would not impair the Master Plan in any way. It doesn't affect ... the conformance of this use with the Master Plan's recommendation and obviously not being able to put a gas station on this site would be a peculiar and unusual practical difficulty ... in my opinion.

(T. 76-77)³

Agency Comment

(18) The State Highway Administration noted it “concur[s] with the [traffic] report findings as currently proposed and will not require the submission of any additional traffic analysis” but Applicant will need its access permit to make the proposed improvements along Landover Road. (Exhibit 3, Backup p. 77; Exhibit 28)

(19) The Health Department completed a Desktop Health Impact Assessment review for the Application, made some recommendations for the use if approved, and noted that certain State licensing requirements must be met if the uses are approved. (Exhibit 32)

(20) The Historic Preservation Section noted that research of available records indicates that the probability of archeological sites within the property is low and there are no historic sites or resources within or adjacent to the property. (Exhibit 3, Backup p. 52)

(21) Pursuant to the Tree Canopy Coverage Ordinance in Subtitle 25 of the Prince George’s County Code, Applicant is required to provide 10 percent of the site area in Tree canopy coverage (a minimum of 0.45 acre or 19,602 square feet). The record in this case has indicated that the site is approximately 4.5 acres in size, but later documents clarified that the special exception area is approximately 1.86 acres in size. In any event, Staff asked that a condition be added to have applicant revise the tree canopy coverage schedule to ensure compliance. (Exhibits 3 and 34)

(22) The Subdivision Review Section provided the following comment on the requirement for approval of a preliminary plan of subdivision for the subject property:

The property consists of Parcel G-9 and Parcel H in their entirety, and a triangular part of Parcel K totaling 4.48 acres of C-S-C zoned land. Parcel G-9 of Kent Village Shopping Center is recorded in Plat Book 41 page 79 in August 1961; Parcel “H” of Kent Village Shopping Center is recorded in Plat Book 57 page 22 in May 1965; and “K” of Kent Village Shopping Center is recorded in Plat Book NLP 143 page 52 dated December 1988.

No preliminary plans of subdivision were found for Parcels G-9 and H, and both these parcels were recorded prior to 1970....

In accordance with Section 24-111(c)(2), development on Parcels G-9 and H is exempt from resubdivision since no construction is proposed on them other than gas pumps.

A 4,649 square-foot royal farms store is proposed on Parcel K, construction of which will use a portion of development entitlement approved for this parcel under PPS 4-86130....

³ Mr. Ferguson’s Land Planning Analysis offers similar support for the variance request. (Exhibit 58, pp. 17-18)

(Exhibit 30)

(23) The Transportation Planning Section reviewed Applicant's traffic study and offered the following comment:

The property is defined by three parcels;

- Parcel G9 = 0.50 acres
- Parcel H= 0.31 acres
- Parcel K (4-86130) = 3.67 acres (approximately 1.06 acres of this are within the development area of the subject application.)

While Parcel K has been the subject of a preliminary plan of subdivision ..., it has never been assigned an explicit trip cap. To determine that entitlement, staff [applied an equation] used to determine the developable portion of a property.... Medial office represents one of the highest trip generating use allowed on C-S-C Zoned property. Pursuant to the "Guidelines" [and based on the equation] Parcel K could potentially generate ... 183 AM trips and ... 243 PM peak trips. Since only a portion of Parcel K (1.06 acres) will be part of the pending special exception application that portion could potentially generate ... 53 AM trips, and ... 70 PM trips. Regarding the two remaining parcels, they are currently improved with fast food restaurants, both of which will be razed to make room for the proposed service station....

The results of the trip analyses show that the proposed development will exceed the trips being generated by the two existing restaurants. However, when the potential trips due to the vesting of a portion of Parcel K (1.06 acres) is factored, the net effect is that the proposed development will have a mixed impact. The morning peak will see a modest increase of 6 trips, while the evening peak will see a decrease of 29 trips.... Since a TIS is being provided, and analyses are done based on the proposed gas station use, a new trip cap will be established based on the trip generation of 96 AM and 82 PM peak trips for the land area being covered by the special exception application....

The resulting analyses show that all of the intersections deemed critical will operate with adequate levels of service....

The property is located in an area where the development policies are governed by the 2014 *Approved Landover Metro Area and MD 202 Corridor Sector Plan and Sectional Map Amendment*, as well as the *Approved Countywide Master Plan of Transportation, November 2009*. The site plan fronts on Landover Road (MD 202), a master planned arterial (A-20), however no additional right-of-way will be required. The plan proposes four access points which are adequate to serve the development. Staff has no issues with future circulation on the stie....

From the standpoint of transportation, it is determined that this plan is acceptable and meets the findings required for a special exception site plan as described in ... Subtitle 27 of the County Code.

(Exhibit 63)

(24) The Technical Staff opined that the request satisfied all other applicable provisions for a Food or Beverage Store. It agreed with Applicant's market study finding that the Food or Beverage Store would be useful, appropriate and convenient for the neighborhood; noted that the size of the store conforms to the requirements of the C-S-C Zone; found that the store would essentially be a replacement for the fast-food restaurant and a take-out restaurant currently on the property, so it will not unduly restrict the availability of land in the area for other allowed use; and there will be no sale of alcoholic beverages. (Exhibit 3)

(25) The Technical Staff also opined that the Gas Station meets all specific requirements for the use, if the variance is approved, noting: the subject property has 250 feet of frontage along, and direct vehicular access to Landover Road, and 392 feet of frontage along and direct vehicular access to Kent Town Place; the boundary of the subject property is only 230 feet from a 12-acre lot that includes a playground (but over 700 feet from said playground so it recommended that the variance be granted); there will be no rental/display of cargo trailers, trucks or similar uses; there will be no storage or junking of wrecked vehicles; the four access driveways proposed are 35-feet in width, and since the site is a corner lot each access driveway is greater than 20 feet from the point of curvature; the access driveways are defined by curbing; the sidewalks are greater than 5-feet-wide, respectively; all gas pumps are in excess of 25 feet behind street lines; there will be no vehicle repair on site; and Applicant submitted architectural elevations of each façade that indicate compatibility with existing and proposed surrounding development. ⁴ (Exhibit 3, pp. 6-11)

(26) The Technical Staff recommended approval of the variance, reasoning as follows:

The proposed site is composed of Parcels G-9, H, and an oddly triangular shaped part of Parcel K. The special exception area is bounded by public and private rights-of-way. The is due to right-of-way improvements of MD202, Kent Town Place, and Kent Town Drive, which is now a private road....

The strict application of [Subtitle 27] would result in unusual practical difficulties, as it would be impossible for the applicant to construct gas pumps to operate an otherwise allowable special exception use at any location on the property, even though the pumps are significantly farther than 300 feet from the nearby playground....

The variance will not substantially impair the intent, purpose, or integrity of the 2014 *Landover Metro Area and MD 202 Corridor Sector Plan and Sectional Map Amendment*. This plan recommends mixed-use residential land use, and the support of redeveloped retail uses along the corridor. The subject property for the special exception is located in

⁴ The Technical Staff did not address compliance with the remaining requirements for the Special Exception found in Section 27-358 (b), (c) and (d).

the Established Communities policy area. The [2014] Plan Prince George's 2035 Approved General Plan describes Established Communities as area appropriate for context-sensitive infill and low-to medium-density development, and recommends maintaining and enhancing public services and infrastructure, to ensure that the needs of residents are met.

The proposed uses of the site are a permitted use by special exception in the C-S-C Zone. Therefore, the variance is compatible with the surrounding area and community....

(Exhibit 3, pp. 11-12)

(27) The Technical Staff recommended approval (with conditions) of both Special Exceptions and proffered the following reasons in support thereof:

A special exception use is considered compatible with uses permitted by right within the ... [C-S-C] Zone if specific special exception criteria are met. A special exception must be approved if the applicant satisfies the required criteria which are intended to address any distinctive adverse impacts associated with the use.

Based on the applicant's statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings, as set forth in Section 27-317 (in general), Section 27-355 (food [or] beverage store), and Section 27-358 (gas station) of the Prince George's County Zoning Ordinance, except for Section 27-358(a)(2). Staff finds the proposed application satisfies the requirements for approving a variance and, therefore, finds the application will be in conformance with the Zoning Ordinance requirements if the variance is granted

(Exhibit 3, p. 13)

APPLICABLE LAW

Special Exception

(1) Pursuant to Sections 27-461 (b)(1)(A) and (B) of the Zoning Ordinance a Gas Station and Food or Beverage Store are permitted in the C-S-C Zone by grant of a special exception, in accordance with Sections 27-317, 27-355 and 27-358 of the Zoning Ordinance.

(2) 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 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 27-355 provides as follows:
- (a) A food or beverage store may be permitted, subject to the following:
 - (1) The applicant shall show a reasonable need for the use in the neighborhood;
 - (2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;
 - (3) The proposed use shall not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses;
 - (4) In the I-1 and I-2 Zones, the proposed use shall be located in an area which is (or will be) developed with a concentration of industrial or office uses;
 - (5) The retail sale of alcoholic beverages from a food or beverage store approved in accordance with this Section is prohibited; except that the District Council may permit an existing use to be relocated from one C-M zoned lot to another within an urban renewal area established pursuant to the Federal Housing Act of 1949, where such use legally existed on the lot prior to its classification in the C-M Zone and is not inconsistent with the established urban renewal plan for the area in which it is located.
- (4) Section 27-358 provides as follows:⁵

⁵ Section 27-358 was recently amended by the District Council in its enactment of CB-48-2021. That legislation would have removed the requirement for a variance in this case since the 300-foot setback is now measured from the

- (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 Permitting, Inspections, and Enforcement, 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

nearest gas pump. However, the legislation also notes that Special Exceptions filed prior to January 1, 2022 and approved shall not be subject to the new law.

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.

(5) The request must also satisfy the purposes of the commercial zones, in general, and the C-S-C Zone in particular, found in Sections 27-446 and 27-454 of the Zoning Ordinance:

Sec. 27-446. General purposes of Commercial Zones.

- (a) The purposes of Commercial Zones are:
 - (1) To implement the general purposes of this Subtitle;
 - (2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;
 - (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;
 - (4) To protect adjacent property against fire, noise; glare, noxious matter, and other objectionable influences;
 - (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;
 - (6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;
 - (7) To increase the stability of commercial areas;
 - (8) To protect the character of desirable development in each area;
 - (9) To conserve the aggregate value of land and improvements in the County; and
 - (10) To enhance the economic base of the County.

Sec. 27-454. C-S-C Zone (Commercial Shopping Center).

(a) **Purposes.**

- (1) The purposes of the C-S-C Zone are:
- (A) To provide locations for predominantly retail commercial shopping facilities;
 - (B) To provide locations for compatible institutional, recreational, and service uses;
 - (C) To exclude uses incompatible with general retail shopping centers and institutions; and
 - (D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

(6) Applicant is requesting some indoor and outdoor seating at the Food or Beverage Store and the Special Exception Site Plan notes that there will be an “Eating or Drinking Establishment” on the site (Exhibit 57). This necessitates a brief review of the definitions section of the Zoning Ordinance. An “Eating or Drinking Establishment” and a “Food or Beverage Store” are defined in Sections 107.01 (a)(81.1) and (91.1), respectively, as follows:

- (81.1) **Eating or Drinking Establishment:** An establishment that provides food or beverages for consumption on or off premise, which may be developed freestanding, on a pad site or attached to another building, or located within another building or located within a group of buildings, which may include a drive-through service, carryout, outdoor eating, music of any kind, patron dancing, or entertainment, excluding adult entertainment uses.
- (91.1) **Food or Beverage Store:** A use providing the retail sales of food, beverages, and sundries primarily for home consumption, and may include food or beverage preparation. Does not include a Department or Variety Store that provides incidental sales of candy, gum and similar non-refrigerated items at a check-out counter, or in a standard vending machine.

Clearly, the “Food or Beverage Store” is defined in a manner that would allow limited indoor and outdoor seating since it merely adds that the use is “primarily for home consumption.” Eating or Drinking Establishments, on the other hand, are defined to allow much more (i.e., drive through service, music, dancing and certain entertainment). Additionally, it is slightly nonsensical to refer to all of the proposed Store as a “Food or Beverage Store” but refer to the seating alone as an “Eating or Drinking Establishment”. For these reasons I would remove “Eating or Drinking Establishment” from the Site Plan, and from the Parking and Loading Schedule. While the Parking Regulations in the Zoning Ordinance do not specifically list a “Food or Beverage Store” use in the parking tables Section 27-571 notes “[f]or uses not specifically listed, the requirement of the most nearly similar use shall be applied.” The uses are very similar, so it would be proper to use the Eating or Drinking Establishment parking calculations in determining how many parking spaces will be required for the amount of indoor and outdoor seating that will be provided with the Food or Beverage Store.

NECESSITY/NEED

(7) The Zoning Ordinance and the County Code do not define the terms “necessary” or need. However, undefined words or phrases shall be construed according to common usage, while those that have acquired a particular meaning in the law shall be construed in accordance with that meaning. (Prince George’s County Code, Section 27-108.01(a)) Webster’s New World Dictionary (2nd College Edition) defines it as “essential” and “indispensable”. The Oxford Languages Dictionary (online) defines “need” as “circumstances in which something is necessary” or “a thing that is wanted or required.” Thus “need” and “necessary” share similar definitions.

In Brandywine Enterprises, Inc. v. County Council, 117 Md. App. 525,540 (1997), the Court of Special Appeals addressed the definition of “necessary” in the County’s Zoning Ordinance as it relates to rubble fills and noted that “‘necessary’... means necessary rather than reasonably convenient or useful.” The Court went on to note that the best method for determining need for a rubble fill would be to assess whether there would be an actual deficit of capacity. In a case involving liquor licenses, Baltimore County Licensed Beverage Association, Inc. v. Kwon, 135 Md. App. 178, 194 (2000), the Court of Special Appeals held that the meaning is dependent upon the context in which “necessary” is used. The Court then found that “‘necessary,’ in this instance, means that the transfer of the liquor license to the transfer site will be ‘convenient, useful, appropriate, suitable, proper, or conducive’ to the public in that area.” Accordingly, I believe the proper standard to apply in the review of both special exception requests is whether the Gas Station/Food or Beverage Store will be “convenient, useful, appropriate, etc.” given the nature of the use.

Variance

(8) Applicant’s request for a variance must satisfy the criteria set forth in Section 27-230 (a) of the Zoning Ordinance. This Section provides as follows:

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.

(9) “Practical difficulties” has been defined in Carney v. Baltimore, 201 Md.130,137 (1952), as follows:

The expression “practical difficulties or unnecessary hardship” means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of practical difficulties or unnecessary hardships should not be made except where the burden of the general rule upon the individual property would not, because of its unique circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwanted invasion of the basic right of private property.

(10) An area variance (such as the one requested herein) need only satisfy the “practical difficulties” standard. (See, Richard Roeser Professional Builders, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2001)) Finally, the hardship may not be self-created. As noted by the Court of Appeals in Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC., 439 Md.588, 623-624 (2013):

[T]he critical issue in determining whether a hardship is self-created is whether the property owner could have avoided the need for a variance. In other words, if a property owner has a hand in creating the ‘peculiar circumstances’ that cause his need for a variance, the owner’s hardship is self-created. But when the ‘peculiar circumstances’ arise from the zoning restrictions themselves, the owner’s hardship is not self-created....

Special Exception

(11) 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.

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. I agree with Applicant's land planner's analysis as to why/how the request meets all applicable purposes but would note that the instant Application satisfies the following purposes for the following reasons in particular:

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

The Gas Station will serve the needs of all County residents that rely on the automobile as a means of transportation. The Food or Beverage Store will further the comfort and convenience of all purchasing gas at the site as it will provide a "one-stop" shopping experience. It will also be convenient for pedestrians in the area since it will provide an opportunity to purchase items of food or drink on their way to work, school, home or exercise.

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

The 2014 General Plan placed the property within the Established Communities. This proposal furthers the General Plan's vision of context sensitive infill development, and the requested uses are permitted in said Zone. While the Sector Plan recommends mixed uses with residential use as the dominant one, it recognized the need for small-scale neighborhood-serving commercial uses such as those proposed in the instant request. Accordingly, this purpose is satisfied.

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

Development of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since few additional vehicular trips are proposed, and no impact on other public facilities has been identified.

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

The two uses will be developed in accordance with all applicable laws, once the variance for the Gas Station is addressed. The developer will be providing stormwater management, new sidewalks, will reduce the current number of driveway accesses from Landover Road from four to one, thereby increasing pedestrian safety and reducing the possibility of car accidents on that highly traveled arterial. The uses also blend in with the

other service commercial uses in the area and the site is designed in an attractive manner that should not detract from the other properties. This purpose is, therefore, met.

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

Both uses ensure that a certain number of jobs will be provided and that taxes will be paid into the County's coffers.

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

(2) The Application satisfies the purposes of the Commercial Zones, in general, and the C-S-C Zone, in particular since: the uses implement many of the general purposes of the Zoning Ordinance, as noted above; traffic efficiency will be maintained by reducing the entrances along Landover Road; the uses are compatible with the other commercial uses in the area and are designed to encourage retail (unlike the older commercial establishments on site that will be razed); and the design, traffic flow, new sidewalks, stormwater management, landscaping, bicycle racks, and safe photometric lighting will all protect the character of desirable development in the area and increase the stability of commercial uses in the area. (Sections 27-317(a) (1), 446 and 454)

(3) The Food or Beverage Store meets the applicable requirements of the Zoning Ordinance, as noted more fully below. However, approval of the Gas Station does require the grant of a variance from Section 27-358 (a)(2) which requires the subject property to be located at least 300 feet from a lot on which a school, outdoor playground, library or hospital is located. I find that the variance can be granted since:

- The subject property is an unusually shaped triangular corner commercial lot in the area, and had the Applicant waited until now to file the request a variance would not be required (since the District Council has revised the Section to require a 300-foot setback from the nearest gas pump on the subject property to any lot on which the playground is located). Additionally, the playground is over 700 feet away and not visible from the requested uses, and separated from the remainder of the Kent Village Apartments lot closest to the subject property by the channel for the Cattail Branch. Taken together there are sufficient facts to find that the land has exceptional shape and is subjected to other extraordinary situations or conditions.(Section 27-230 (a)(1));
- It is the law itself that is causing the peculiar and unusual practical difficulty and not any action by Applicant; it wishes to operate a permitted use in the Zone and there is nowhere on the site to feasibly relocate the Gas Station and meet the setback from the Kent Village Apartments property (Section 27-230 (a)(2)); and

- As noted by Applicant's expert witness and the Technical Staff, *supra*, the variance will not substantially impair the intent, purpose or integrity of the General Plan or Master Plan. It is the type of infill development lauded in the General Plan since it has not and is not anticipated to have any adverse impact upon public facilities, and it is the time of neighborhood-serving commercial use supported in the Sector Plan. (Section 27-230(a)(3))

The Food or Beverage Store and (once the variance is granted) the Gas Station use can be found to be in conformance with the applicable provisions of the Zoning Ordinance. (Section 27-317 (a)(2))

(4) Again, both uses conform to the General Plan's vision of context sensitive infill development and the Sector Plan's long-term vision of small-scale neighborhood-serving commercial uses. (Section 27-317(a)(3))

(5) The uses will be an improvement to the older commercial uses that have been operating successfully at the site for several years since the design will complement the other uses in the area, there will be additional landscaping, sidewalks and bike "parking", and the pedestrian/vehicular safety will be furthered by a reduction in the current number of driveway accesses along Landover Road. Moreover, there is an increasing number of residences and industrial uses in this area, and a new Gas Station in combination with the Food or Beverage Store will prove to be useful and convenient to those who live/work near or travel along this major arterial, located relatively close to a Metro Station. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area, nor be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4) and 27-317(a)(5))

(6) The proposal is exempt from the provisions of the Woodland and Wildlife Habitat Conservation Ordinance, as discussed *supra*, so there is no approved Type 2 Tree Conservation Plan. (Section 27-317(a)(6))

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

(8) The subject property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317 (b))

(9) The Food or Beverage Store satisfies the criteria found in Section 27-355 of the Zoning Ordinance. Applicant's expert prepared a market study that established a reasonable trade area near the site and noted that given the dearth of fresh food options at the other Food or Beverage Stores within said area, their age, and their smaller size there is a reasonable need for the proposed store if need is defined as "useful, appropriate, and convenient." (Section 27-355 (a)(1)) The subject property has four

access points- one along Landover Road (reduced from the four currently provided in an effort to increase traffic and pedestrian safety), two along Kent Town Place, and one from the vacated right-of-way, Kent Town Drive; adequate parking; and the Store is of sufficient size to meet the needs of the neighborhood. (Section 27-355 (a)(2)) If the request is approved two older restaurants will be razed to make room for one, modern facility - this infill development would, therefore, not unduly restrict the availability of land, or upset the balance of land use in the area for other allowed uses. (Section 27-355 (a)(3)) The property is not located in the I-1 or I-2 Zones. (Section 27-355 (a)(4)) There will be no sale of alcoholic beverages in the Store, and a note will be added to that effect. (Section 27-355 (a)(5))

(10) According to the expert land use planner, the property has 277.05 feet of frontage along Landover Road, a street with a variable right-of-way width that is approximately 115 feet in width near the subject property, and 388.02 feet of frontage along Kent Town Place. (Section 27-358(a)(1)) Other documents, including the Special Exception Site Plan, provide slightly different numbers for the amount of frontage on these streets, but all exceed the requisite 150 feet. As a condition of approval I would ask that Applicant review and clarify the exact numbers, and revise the Special Exception Site Plan, accordingly.

(11) There are no schools, libraries or hospitals on a lot within 300 feet of the subject property. There is a playground that is approximately 700 feet from the subject property but located on a lot only 229.7 feet from it. Applicant has requested a thirty-foot variance from this provision that meets all criteria for approval. (Section 27-358(a)(2))

(12) The Site Plan notes that there will not be any display or rental of cargo trailers, trucks or similar uses; and the storage/junking of wrecked motor vehicles is prohibited. (Sections 27-358(a)(3) and (4))

(13) The Special Exception Site Plan indicates that the access driveways exceed 30 feet in width; as this is a corner lot, the driveways also far exceed the requirement that they begin at a point not less than 20 feet from the point of curvature; and since the property is surrounded by streets and a vacated right-of-way there is no adjoining lot. (Section 27-358(a)(5))

(14) All access driveways are defined by curbing. (Section 27-358(a)(6))

(15) The sidewalks along Landover Road (MD 202), Kent Town Place, and Kent Town Drive are at least 5 feet in width. (Section 27-358(a)(7))

(16) The setback of the gasoline pumps from the street line is not provided. However, the 25-foot setback line is noted on the Special Exception Site Plan and the gas pumps are slightly further back than that line. (Section 27-358(a)(8))

- (17) There will be no repair services offered on site. (Section 27-358(a)(9))
- (18) Applicant submitted architectural elevations which depict each façade and exterior finishes and the proposed building and canopy on site will not detract from the existing and proposed surrounding development and are an improvement when compared to the buildings that will be razed if the request is approved. (Section 27-358 (a)(10))
- (19) The Special Exception Site Plan shows the topography of the subject property and abutting lots for a depth of at least 50 feet, as well as the location and type of trash enclosure, and the location of air pump stations and vacuums. There will be no exterior vending machines. (Section 27-358(b))
- (20) A note should be added to the Special Exception Site Plan to state what must be done upon the abandonment of the Gas Station. (Section 27-358(c))
- (21) Applicant provided sufficient evidence to show that the gas station is necessary to the public in the surrounding area, in that it is reasonably convenient and useful to the traveling public within the trade area established by the expert marketing witness. It will not upset the balance of land use in the area for other trades and commercial uses, since it is replacing two older restaurants and is, therefore, infill development that will modernize the property and may attract other commercial uses to the area. (Section 27-358(d))
- (22) The Technical Staff Report recommended certain conditions be imposed if the request is approved. Condition 2 suggested the replacement of one schedule on the Landscape Plan “if Kent Town Drive is a public roadway.” Applicant submitted information in the record and revised the Special Exception Site Plan to note that Kent Town Drive is a vacated right-of-way. Accordingly, I did not add this condition. Applicant’s witness testified that the Landscape Plan did provide the schedule to demonstrate conformance with Section 4.6 of the Landscape Manual ; did submit justification for the two freestanding signs, and did properly address the tree canopy coverage schedule. I choose not to delete these other recommended conditions because I would like Staff to have the opportunity to review these changes, and because I am adding additional conditions that will require revisions to the Special Exception Site Plan to ensure it is properly named, has the proper street identification, uses the proper terminology from the Zoning Ordinance, inserts the proper gross and net area for the Special Exception property - all to guarantee that the information is clear, and will not be subject to interpretation at a later date.

DISPOSITION

Special Exception 4834 and Variance 4834 are Approved, subject to the following conditions:

Prior to certificate approval and issuance of permits, Applicant shall revise the Special Exception Site Plan as follows, and submit the revised Plan to the Zoning Hearing Examiner for approval and inclusion in the record:

1. Revise the site address in the General Notes to include all of the addresses for that portion of the site within the Special Exception boundaries or provide verification that 7415 Landover Road is the proper cite, and to clarify that the site only includes "part of K".
2. Revise the General Notes and the entire 13-page document to delete reference to an "Eating and Drinking Establishment", and to delete "convenience store" and insert "Food or Beverage Store" throughout.
3. Revise the Parking and Loading Schedule (page 4 of 13) to delete "Retail" and insert "Food or Beverage Store"; also delete "Eating and Drinking Establishment" and insert "Food or Beverage Store".
4. Provide a new signage plan, including clearly identifying the number and location of freestanding signs, to demonstrate conformance with the applicable requirements of Part 12, Signs, of the Prince George's County Zoning Ordinance.
5. Revise the Tree Canopy Coverage schedule (page 10 of 13) to demonstrate conformance with the Tree Canopy Coverage Ordinance.
6. Revise the Special Exception Site Plan (page 4 of 13) to add "Special Exception" and include the General Notes on this page since it includes the other criteria (such as topography) required to be shown on the Special Exception Site Plan, and it is the plan generally certified by the Examiner (not the Cover Sheet).
7. Revise the Special Exception Site Plan (page 4 of 13) to remove reference to the 2002 General Plan and include the correct reference to, and information from, the 2014 General Plan ("Plan 2035")

- 8, Revise the Landscape Plan to provide a schedule that demonstrates conformance with Section 4.6 of the 2010 *Prince George's County Landscape Manual*]
9. Revise the General Notes to state that the retail sale of alcoholic beverages shall be prohibited.
10. Revise the General Notes to state that upon the abandonment of the Gas Station, the Special Exception shall terminate and all structures exclusively used by the Gas Station including underground storage tanks, except buildings, shall be removed by the owner of the property. "Abandonment" shall mean nonoperation as a Gas Station for a period of fourteen (14) months after the Gas Station's retail services cease.

[Note: The revised Special Exception Site Plan and Landscape Plan are part of Exhibit 57, a thirteen (13) page document]