

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

SPECIAL EXCEPTION

4730

DECISION

Application:	Gas Station and Car Wash
Applicant:	Walnut Limited Partnership/PEH, LLC/SMO ¹
Opposition:	None
Hearing Date:	December 18, 2013
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4730 is a request to use approximately 1.62 acres of land, in the C-S-C (Commercial Shopping Center) Zone, for a Gas Station and Car Wash. Applicant will also raze and rebuild a food or beverage store, permitted by right in the C-S-C Zone. The subject property is located on the northeast corner of the intersection of Bauer Lane and Sandy Spring Road (MD 198), and is identified as 6000 (Parcel A) and 6004 (Parcel B) Sandy Spring Road, Laurel, Maryland.

(2) The Technical Staff recommended approval with conditions, provided that the Applicant reconfigure its proposed Car Wash. (Exhibit 15) The Planning Board chose not to hold a hearing on the request and accepted Staff's recommendation as its own. (Exhibit 19)

(3) At the conclusion of the evidentiary hearing the record was left open for the inclusion into the record of several documents. The last of these items was received on February 11, 2014, and the record was closed at that time.

FINDINGS OF FACT

Subject Property

(1) The subject property is currently improved with a 2,051 square foot Gas Station with three (3) service bays and a Food or Beverage Store, four (4) concrete pump islands, eight (8) gasoline pump dispensers, one (1) canopy, two (2) underground storage tanks, one (1) freestanding sign, and associated surface parking spaces. The Gas Station was constructed in 1968.

¹The original Applicant was Southern Maryland Oil. The Application was revised to reflect the change in the legal entity that will operate the use. (Exhibit 23)

(2) The site is a corner lot with direct vehicular access to Sandy Spring Road (MD 198). The property does not lie within the municipal boundaries of the City of Laurel. The property is not located within a Chesapeake Bay Critical Area Overlay Zone. Natural Resources Inventory Plan 148/12 was approved on 1/17/2013; TCP II-245-02 was approved on 5/7/2013 and Stormwater Concept Plan No. 37879-3013-00 was approved on 4/17/2013. (Exhibits 40 (c))

Master Plan and Sectional Map Amendment

(3) The 2010 Subregion I Master Plan and Sectional Map Amendment designated the subject property for commercial land use and retained the subject property in the C-S-C Zone. The Master Plan expressly recognized the existing Gas Station in its discussion of the West Laurel Community (2010 Subregion I Master Plan, p.140)

(4) The 2002 Prince George's County General Plan locates the subject property 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

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

North & West -	Mill Bond Road
South -	Sandy Spring Road (MD 198)
East -	Baltimore Gas and Electric

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

North -	Single family detached houses along Bauer Lane in the R-R (Rural Residential) Zone
South -	Across Sandy Spring Road, an undeveloped parcel in the E-I-A (Employment and Institutional Area) Zone. The Washington Suburban Sanitary Commission (WSSC) Patuxent Water Filtration Plant in the E-I-A zone is further to the southeast
East -	Power lines and a WSSC water treatment facility in the R-R Zone
West -	Across Bauer Lane are single-family houses in the R-R Zone

Zoning History

- (7) The Technical Staff provided the following history of the zoning for the subject property:
- On July 17, 1980, the Prince George's County Planning Board approved Revision of Site Plan ROSP-1673/01 for the construction of a sales kiosk, additional parking, and landscaping (PGCPB Resolution No. 80-50). A variance was approved in conjunction with the revision (VA-5722) to allow an access driveway less than 30 feet wide and a waiver from the requirement for a landscaped front yard setback strip of ten feet along a public street line.
 - On December 16, 1993, the Planning Board approved ROSP-1763/02, to remove the kiosk, add a gasoline dispenser, and make minor site modifications (PGCPB Resolution No. 93-997).
 - On February 16, 1995, the Planning Board approved ROSP-1763/03, a minor revision to extend by 20 feet an existing six-foot-high sight-tight fence along the west side of the subject property (PGCPB Resolution No. 95-48).
 - On November 14, 1996, the Planning Board approved ROSP-1673/04 to allow the provision of an enclosure to an existing portico area, a new handicapped-accessible restroom, and the remodeling of the sales/waiting room area. The applicant had also requested a variance to waive the five-foot-wide sidewalk requirement along Sandy Spring Road (MD 198) and Bauer Lane. The variance request was denied and a condition was included requiring the installation of the sidewalk. It was never constructed.
 - A limited minor change was approved by the Planning Director on June 3, 2005. The request was for the addition of an above-ground heating oil tank behind the existing convenience store on Parcel A. In 1984, the Board of Appeals granted a Variance (VA-12247) from Section 27-358(a)(5) of the Zoning Ordinance for ten feet to allow an access driveway to begin ten feet from the point of curvature, and for six feet to allow a driveway to begin or end at a point six feet from the side yard of the adjoining lot.
 - A second Special Exception (SE-4597) to expand the gas station onto the adjoining parcel (Parcel B) was approved by the District Council on March 28, 2005. At that time, the District Council waived the requirement for a sidewalk along Sandy Spring Road and Bauer Lane. A companion Revision of Site Plan (ROSP 1673/06) was also approved at that time to remove

underground storage tanks, to validate an accessory building, and relocate parking spaces at the existing station.

(Exhibit 12, pp. 4-5)

Applicant's Proposal

(8) Applicant's holding company, the Wills Group, purchased the existing Gas Station in 2009 from the Shell Oil Company. (T. 8-9) Applicant is proposing to raze and rebuild the existing Gas Station by expanding to 6,204 square feet , adding a 3,180 square foot food or beverage store (convenience store) – a use permitted by right in the underlying zone- and a 1,051 square foot car wash on the southwestern portion of the site. (Exhibit 40 (c))

(9) The Gas Station is expanding to eleven (11) fueling stations. One of the fueling positions will be dedicated to diesel fuel, and is intended for use primarily by small commercial vehicles.² The pump islands will be covered by a canopy. The underground fueling tanks will be buried adjacent to the canopy. (T.41) The closest gasoline dispenser is approximately 30 feet from Sandy Spring Road.

(10) There will be a 25-foot-tall, free standing pylon sign south of the proposed Car Wash. Applicant provided a detail for the sign. (Exhibit 29; T. 76-77) It will have a brick veneer base to be compatible with the architecture used elsewhere on site.

(11) Applicant relocated the Car Wash from the original setting to what it believes to be the location less detrimental to the surrounding properties. Matt Jones, accepted as an expert in civil engineering, testified that the Car Wash is now proposed to be located on the southwestern corner of the site "to allow sufficient stacking area to separate the activities for the car wash from the main pedestrian and vehicular circulation areas... [and to avoid] creating additional vehicular conflicts ... by moving the car wash adjacent to the convenience store." (T. 41, 45-46) Mr. Jones further noted that the proposed location is the furthest from any single family dwelling on Bauer Lane. (Exhibits 34 and 35; T. 46-48) Applicant is lowering the grade of the property near the proposed Car Wash and convenience store "to physically minimize the presence of [the] Car Wash facility." (T.48) Applicant also revised its landscape strip along Bauer Lane by adding 13 additional evergreen trees to further screen the car wash. (Exhibit 36; T. 89

(12) Applicant provided elevations and architectural renderings for all proposed structures on site. (Exhibits 26, 27, 28 and 29) Representatives of the West Laurel Civic Association advised Applicant that it would prefer the use of brick, and that anything built be compatible with the surrounding residential community. (T. 11, 15, 103-104) As a result, Applicant has provided more brick (LaPlata Red) and introduced additional

² There was some discussion as to whether this 11th fueling position would be considered a "commercial fuel depot" – a use that requires a separate special exception. (T. 58-64) I do not believe that to be the case. Applicant is simply providing an area where larger, slower vehicles can fill up without inconveniencing others.

architectural elements, such as windows, to make the project more compatible. (T. 15-21) It also has attached the canopy to brick columns to tie in with the architectural changes to the store and Car Wash. (T. 17-18)

(13) Applicant submitted photographs of the existing site and of another facility similar to that proposed to be constructed on the subject property. (Exhibits 39(c)–(e))

(14) The subject property has approximately 308 feet of frontage along Sandy Spring Road (MD 198), which has an ultimate right-of-way width of 150 feet. The closest school, playground, library or hospital is more than 300 feet from the site. (Exhibit 15, p. 6) There will be no display or rental of cargo trailers, trucks or similar uses, nor does Applicant propose the storage/junking of wrecked motor vehicles. No repair services will be provided.

(15) There will be two access driveways from Sandy Spring Road, one 30 feet in width and the other 33 feet. (Exhibit 40(c)) Applicant will be removing an existing access closer to Bauer Lane. Accordingly, the new access driveway closest to Bauer Lane will begin 94 feet from the point of curvature of the curb return. (Exhibit 40(c); T. 52-53) There are 12.4 feet from the closest side lot (belonging to Baltimore Gas and Electric) and the point of curvature for an access driveway. Applicant is providing a five (5) foot wide sidewalk along Sandy Spring Road closest to Bauer Lane “to pick up any immediate pedestrian traffic that might come from the neighborhood adjacent to Bauer Lane.” (T. 54)

(16) The Site Plan shows the topography of the lot and abutting lots, and location and type of trash enclosure. (Exhibits 40 (b) and (c)) There will be no external vending machines or vending area. Applicant submitted a lighting plan that indicates that the lighting will be designed in a manner as to not spill off site. (Exhibit 40(g); T. 112)

(17) Mark Ferguson, accepted as an expert in the area of land use planning, offered testimony (oral and written) explaining why the Application satisfied all applicable provisions of law. He first addressed why Applicant’s proposed design of the site should be approved:

One of the things that you’ve heard a lot of discussion about, you know, particularly in the context of the car wash, and also the operation of the station is discussion of queuing, and one thing that is important to mention, it was certainly prominent in the testimony in the prior Special Exception, you know, in the late 2000s, or the mid-2000s, is that one of the features ... is that it is very well patronized to the extent that there is regularly traffic from the site queuing out onto 198 with patrons waiting to be able to get to the pumps. And certainly it’s worth mentioning that the design of all of the components of the site were perhaps more critically focused at this site on efficient vehicular circulation inside the site to be able to minimize the incidence of traffic backing up onto 198. So, the provision of the additional pumping stations will provide, you know, ... the ability for the station to have a greater through-put ... at

peak usage times, as well as the site's ... paved area will be expanded such that to the extent that there is queuing for people waiting to use the gas station that there is more room afforded for that on the site. And then similarly because of the high traffic at this particular station the requirement to keep any queuing that might occur from the car wash from interfering with circulation to the pumps is particularly important. You know, the Staff of the Urban Design Section had recommended locating the site of the car wash over in the southeast corner of the site, and I think perhaps they meant northeast, but if you do that even if you put the site at an angle here along the northern edge of the curb oriented east-west, the amount of queuing that's provided by the proposed configuration would extend out onto 198, even were the car wash located all the way over there....

[Moreover] I think that if you moved the car wash certainly anywhere to the north you would be much closer to the joining houses to the north.... [The home across Bauer Lane] is north to the north in extent, ... [s]o, in that property's configuration, you couldn't locate a house closer to 198....

(T. 99-102)

Landscaping

(18) A tiered wall , sight-tight fence and landscaping are being added to the north of the site to minimize any impact on the homes in the West Laurel Community. (Exhibit 40(c) and (40(e); T. 49) There is additional landscaping provided to the west , east and south of the parcel as well.

Parking

(19) Applicant is required to provide 27 parking spaces for the proposed uses on site. (Exhibit 24(c), T. 26-27) Applicant is proposing to use two of them for a vacuuming area (with the vacuum equipment located in the landscape island) as well as parking. (T. 77-81) There is nowhere else for the vacuums to be located. (T. 28) Staff noted that dedicated parking spaces cannot be used in this manner.

Agency Comment

(20) The Technical Staff recommended approval, with conditions, reasoning as follows:

Urban Design suggests that the placement and design of the proposed car wash as currently proposed is difficult to find compatible with surrounding development. We concur. The introduction of a 24-hour unmanned car wash along the Bauer Lane frontage is not appropriate, given its residential character. The car wash should be relocated or removed. Staff would suggest incorporating the car wash as part of the convenience store building, rather than having it as a stand-alone structure. This

would allow for a greater setback and decrease the visual impact of the buildings on the site relative to the surrounding residentially-zoned properties....

The fact that a gas station has successfully existed on this site for more than 45 years suggests that it is necessary to the public in the surrounding area. The District Council has twice found this to be the case. Staff does not find that the proposal will unduly restrict the availability of land or the balance of land use in the area for other commercial uses....

The proposed use and site plan are in harmony with the purposes of the Zoning Ordinance.... All applicable requirements and regulations are met, with no variances or departures required. The proposed special exception represents, in effect, an extension of the existing gas station rather than a new use. The proposal will provide improved vehicular access to the site and remove a potentially hazardous one-way access point close to Bauer Lane along a high-volume high-speed arterial. The Subregion I Master Plan recommends 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. Therefore, the proposed use will not substantially impair the integrity of the master plan for this area....

A gas station has been in continuous operation on this property since the District Council's approval of SE-1673 in 1968, 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 cut-off optic outdoor lighting that will provide patrons with a bright safe atmosphere, while not causing glare onto adjacent properties. As a result, staff finds that with the attached conditions, the proposed use will enhance the health, safety, and welfare of residents and workers in the area.

However, this finding is dependent on the relocation of the proposed car wash. While staff understands the applicant's desire to place the car wash where it allows for the greatest amount of stacking for cars, we do not feel that a 24-hour unmanned car wash is appropriate along an otherwise residential street, directly across from a single-family residence. The noise and visual intrusion associated with the car wash as shown on the plan does not promote the most beneficial relationship between uses of land and buildings.

(Exhibit 15, pp. 9-11)

(21) Staff had an opportunity to review the revised Site Plan. It noted that the revisions satisfied all of its recommendations with the exception of the relocation of the Car Wash. (Exhibit 42)

(22) The Transportation Planning Section opined that the Application will not adversely affect the health, safety or welfare of residents or workers in the area, and not be detrimental to the use or development of properties in the area, reasoning as follows:

The applicant is proposing to raze and remove all existing structures on the site and construct a 3,180 square foot food and beverage store, a 1,051 square foot car wash, 10 multi-product gas dispensers, and one diesel dispenser. The food and beverage store is permitted in the C-S-C Zone, the gas station and car wash [require] a special exception. The site is currently developed with an existing gas station and food and beverage store.

The two commercial driveways shown on the plan are proposed further east than the existing entrances on Sandy Spring Road (MD 198) which is an improvement. These will be right-in/right-out entrances. An extra-wide driveway is shown on the plan between the proposed gas dispensers (fueling islands) and the convenience store. The proposed car wash would be located parallel to Bauer Lane. This location is designed to prevent any possible queuing onto Sandy Spring Road. There is no access to the site from Bauer Lane. The applicant states the "proposal has been designed to provide for the safe internal flow of pedestrians and vehicles on-site and for the safe ingress and egress of vehicles." The site plan has a better layout than the existing configuration, although the width of the 42-foot driveway will pose challenges to pedestrians walking between the fueling island and the convenience store. Overall on-site circulation for vehicles is good.

(Exhibit 15, pp. 32-33)

(23) The State Highway Administration ("SHA") requested that Applicant provide a traffic Impact Study ("TIS") for its proposed uses of the property. (Exhibit 21) Applicant did so, and submitted a copy of the TIS for inclusion in the record. (Exhibit 39 (f)) The TIS indicates that the intersections closest to the subject property will continue to operate at an acceptable level of service if the Application is approved. (Exhibit 39(f), p. 17) The SHA reviewed the TIS and offered the following comment:

The SHA concurs with the report findings for this project as currently proposed and will not require the submission of any additional traffic analyses.... However, an access permit will be required for all construction within the SHA right of way....

(Exhibit 39 (h))

LAW APPLICABLE

(1) Pursuant to Section 27-461(b) of the Zoning Ordinance, a Gas Station and a Car Wash are permitted in the C-S-C Zone upon grant of a Special Exception in accordance with Sections 27-317 and 358 of the Zoning Ordinance.

(2) Section 27-317 states as follows:

Sec. 27-317. Required findings.

(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 27-358 provides as follows:

(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.

(4) Sec. 27-551 of the Zoning Ordinance sets forth the permitted uses of parking and loading areas. That Section provides as follows:

(a) **In general.**

(1) Parking lots are for the sole purpose of accommodating the passenger vehicles of persons associated with the use which requires the parking lot. Parking lots shall not be used for loading purposes. The loading spaces are required for the purpose of accommodating vehicles delivering and removing merchandise or other material.

(2) Except as provided in this Section, these parking and loading areas and their access driveways shall not be used for:

(A) The sale, display, or storage of automobiles or other merchandise;

(B) Parking of vehicles accessory to the use;

(C) Performing services (including services to vehicles); or

(D) Any other purpose, except as permitted in this Part.

* * * * *

(5) The requested uses must satisfy the following general purposes of commercial zones, set forth in Section 27-446(a) of the Zoning Ordinance:

- (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.

(6) The requested uses must also comport with the following specific purposes of the C-S-C Zone, found in Section 27-454(a) of the Zoning Ordinance:

- (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. (b)

Necessity

(7) The Zoning Ordinance and the County Code do not define the term “necessary”. 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”. 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 rubblefills 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 rubblefill 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.” The proper standard to apply in the review of the instant request is whether the Gas Station will be “convenient, useful, appropriate, etc.” given the nature of the use. Moreover, the District Council has applied this standard in its most recent decisions involving Gas Stations.

Special Exceptions

(8) In Schultz v. Pritts³, 291 Md. 1, 432 A. 2d 1319, 1325 (1981), the Court of Appeals provided the following standard to be applied in the review of a special exception application:

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once conditions, noted below, are met.

CONCLUSIONS OF LAW

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

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

³ A recent decision by the Court of Appeals, Montgomery County v. Butler, 417 Md. 271 (2010), does not entirely reverse the Schultz decision. The Court did hold in Butler, however, “that, to the extent there is any inconsistency between the special exception standards in the prevailing County Code and the reasoning and holdings of Schultz and its progeny, the County . . . was free [to provide differing standards in its legislation].” *Id.*, At 278. There are no differing standards in the Zoning Ordinance; accordingly, Schultz can be cited in this case.

- (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 and Car Wash will offer improved traffic circulation, attractive landscaping, and architecture that is compatible with the surrounding neighborhood. The uses are also convenient to the traveling public. Accordingly, this purpose is met.

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

The relevant Plans recognize this commercial use of the property. Therefore the request is consistent with said 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 renovation of long-existing uses and the addition of a use that is increasingly constructed along with Gas Stations, 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.

- (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 expanding and improving uses 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 requested uses 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. Applicant will also further this purpose by installing additional directional lighting around the property to foster safety.

- (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 request would be in harmony with this Purpose because two of the uses have been operating successfully at the site for many years, the new Car Wash is a use that is beneficial to the traveling public, and the entire development will result in an updated, aesthetically pleasing site with minimal impact on adjoining properties.

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

The instant request 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, and the Building Code.

(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 Application 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 Application 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 Zoning Ordinance that address lot coverage, 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 Application will add only three (3) new fueling positions, a small Car Wash and a small Food or Beverage Store. As such, it 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. Finally, the Transportation Section and the SHA have reviewed the Site Plan and the Traffic Impact Study, respectively, and raised no objection.

(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 request would promote the economic and social stability of the County by contributing to the tax base, and by continuing to provide a useful and convenient service to the surrounding community.

(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;

The renovation of the site will be done in conformance to all applicable laws designed to address these environmental issues. Accordingly, the Application will be in harmony with this Purpose.

The final two Purposes,

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

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

are not directly applicable to the approval of this Gas Station.

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

(3) The instant Application is also in harmony with the general purposes of the Commercial Zones since: the instant proposal will implement the general purposes of the Zoning Ordinance; approval of the facility at this location will allow the commercial uses that provide a useful and convenient service for those who live, work or travel in the area; the property will be developed in accordance with provisions of the Landscape Manual that provide for buffering between it and its residential neighbors, and Applicant has taken steps to ensure that no glare escapes from the site to the surrounding properties; this commercial use of the subject property is recognized in the applicable Master Plan; and allowing the two uses to stay at the site, and adding the Car Wash to improve services to the traveling public, will increase the stability of this commercial area and enhance the

economic base of the County.

(Section 27-446(a))

(4) The instant Application is also in harmony with the specific purposes of the C-S-C Zone since the District Council has determined that these Special Exceptions are permitted therein, and one purpose of said zone is to provide locations for service uses. (Section 27-454(a))

(5) 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 Sandy Spring Road (MD 198) a street with a 180 foot right-of-way along the property's frontage. (Section 27-358(a)(1))

(6) No lots containing schools, libraries, hospitals or outdoor playgrounds exist within 300 feet of the subject site. (Section 27-358(a)(2))

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

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

(9) The Site Plan (Exhibit 40) indicates that the proposed access driveways onto Sandy Spring Road (MD 198) are 30 and 33 feet-wide, respectively. The property is a corner lot, and the driveway begins at a point that is 94 feet from the point of curvature, and more than 12 feet from the adjoining property (owned by Baltimore Gas and Electric).

(10) The Site Plan indicates that the access driveways are to be defined by curbing. (Section 27-358(a)(6))

(11) The Site Plan indicates a 5 foot wide sidewalk will be constructed along the site's frontage from the access driveway on the southwestern portion of the site to Bauer Lane since this is the area most likely to serve pedestrian traffic. (Section 27-358(a)(7))

(12) The Site Plan indicates that the closest gas pump will be approximately 30 feet behind the closest street line (Sandy Spring Road/MD198). (Section 27-358(a)(8))

(13) No repair service is proposed. (Section 27-358(a)(9))

(14) The architectural details of the proposed structure are designed to harmonize with the masonry character of the homes to the north and northwest. (Section 27-358(a)(10))

(15) Topography of the subject lot and fifty feet into the abutting streets and lots has been shown on the Site Plan. (Section 27-358(b)(1)) The location and details for the construction of a trash enclosure have been shown on the Site Plan. (Section 27-358(b)(2)) No exterior vending machines or a vending area are proposed. (Section 27-358(b)(3))

(16) 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. (Section 27-358(c))

(17) As noted supra, 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. (Section 27-358(d)(1))

(18) Since two of the proposed uses have successfully operated in the area for many years without incident, and there is no evidence that the addition of a Car Wash will upset the balance of land uses in the area, it can be found that the Application will not upset the balance of land use or restrict the availability of land for other trades and commercial uses. (Section 27-358(d)(2))

(19) The uses are in conformance with all the applicable requirements of the Zoning Ordinance – no variances or departures are requested. (Section 27-317(a)(2)) The General Plan and Master Plan for the area recognized the commercial use of the property. The continuation of these uses, with the addition of a Car Wash, will not substantially impair the integrity of these plans. (Section 27-317(a)(3))

(20) The proposed uses are to be developed in a manner that blends aesthetically with the surrounding community, that provides additional landscaping and state of the art stormwater protections, that reduces the possibility of the unsafe queuing of vehicles, and that lessens the impact of the Car Wash on the dwellings in the area. Accordingly, the uses will not adversely affect the health, safety or welfare of residents or workers in the area, nor will they be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317 (a) (4) and (5))

(21) The Application is in conformance with the approved Type 2 Tree Conservation Plan (TCP2-245-91-03). (Section 27-317(a)(6)) There are no regulated environmental features on site. (Section 27-317(a)(7)) Finally, the property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(22) The Applicant has requested that vacuuming equipment be placed in the landscape area adjacent to two required parking spaces. This would render these spaces unavailable

for parking when a vehicle is being serviced (i.e. “vacuumed”). Section 27-551 of the Zoning Ordinance expressly prohibits this use of required parking spaces. Accordingly, the vacuuming equipment must be deleted.

(23) Applicant has worked with the community to design all uses in a manner that is compatible with its surrounding environs. The expert witnesses reviewed the property and agreed that the best location for the Car Wash, from a traffic safety standpoint, is its present location on the Site Plan (east of Bauer Lane). Applicant has changed the elevations in that area and provided additional landscaping to ensure that the Car Wash not negatively impact the area. Moreover, the home on Bauer Lane closest to the subject property, is actually more north of the proposed Car Wash, and not directly across from it. (Exhibit 35) Accordingly, while I understand and respect Staff’s position, I believe the request can be approved with the Car Wash located in the area depicted on the Site Plan. I would agree, however, that the Car Wash hours of operation should be restricted to lessen any impact on the residential community.

DISPOSITION

SE 4730 is Approved, subject to the following Conditions:

1. Prior to the issuance of permits, the Special Exception Site Plan shall be revised as follows:
 - a. Amend Note 3 by including a reference to the 11th remote diesel dispenser;
 - b. Remove the vacuums from the required parking spaces, or revise the site plan to show that any parking spaces to be used for vacuum staging are additional to the required parking count for the site.
 - c. Add a Note that states that the hours of operation for the car wash are daily from 6:00 a.m. - 10:00 p.m.

[Note: The Approved Special Exception Site Plan is Exhibit 40 (c)-(d), and the Approved Landscape Plan is Exhibit 40 (e)-(f)]