

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

RECONSIDERATION

SPECIAL EXCEPTION

4758

And

VARIANCE

4758

DECISION

Application: Gasoline Station
Applicant: St. Barnabas Road Plaza, LLC
Opposition: None
Hearing Dates: August 1, 2016
Hearing Examiner: Maurene Epps McNeil
Disposition: Approval

NATURE OF REQUEST

- (1) Special Exception 4758 is a request to develop 0.32 acre (13,846 square feet) of land in the C-S-C (Commercial Shopping Center) Zone as a Gasoline Station, Food and Beverage Store, Auto Repair and accompanying office and storage.¹ Applicant also seeks a variance to validate certain setbacks on the site. The subject property is located at the northwest corner of St. Barnabas Road and Dallas Drive, and identified as 4801 St. Barnabas Road, Temple Hills, Maryland.
- (2) The Technical Staff recommended approval of the Application with conditions. (Exhibit 13) The Planning Board also recommended approval with conditions. (Exhibit 16)
- (3) No one appeared in opposition to the request at either of the original hearings.
- (4) At the close of the first hearing the record was left open to advertise the variance request and hold an additional hearing. A second hearing was held on June 1 2016, and the record was closed at that time.
- (5) This Examiner issued a decision on July 1, 2016 approving the request with one condition. (Reconsideration Exhibit 5) On July 12, 2016 Applicant timely filed a request that I reconsider the condition, pursuant to Section 27-327 of the Zoning Ordinance. (Reconsideration Exhibit 1) On August 1, 2016 a hearing was held on the request.

¹ The Food and Beverage Store and Office with storage space are permitted by right in the C-S-C Zone.

- (6) This Decision incorporates all of the evidence and testimony in SE/VSE 4758.

FINDINGS OF FACT

Subject Property

(1) The subject property is located in a strip shopping center. It is a rectangular-shaped parcel improved with an existing Gas Station constructed in 1956.² The site is also improved with an auto repair service with three (3) service bays and a food and beverage (convenience) store with a small office for the manager, three (3) gasoline pump dispensers, one canopy, three underground storage tanks, one freestanding sign, and eleven (11) surface parking spaces. The site has direct vehicular access via four driveways – two on St. Barnabas Road and two on Dallas Drive. (April 20, 2016 T.10)

(2) The property is not subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because the site contains less than 10,000 acres of woodland and does not have a previously approved Tree Conservation Plan. (Exhibits 8 and 13)

(3) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Exhibit 41)

Surrounding Property/Neighborhood

(4) The neighborhood is defined by the following boundaries: on the north, by Barnaby Run Stream Valley and Saint Clair Drive; to the northeast, by 28th Avenue; to the southeast, by St. Barnabas Road; and, to the west, by Raleigh Road.

(5) The following uses surround the subject property:

- North – A convenience store and restaurant in the C-S-C Zone.
- South – Across St. Barnabas Road are several auto repair and sales lots in the C-S-C Zone.
- East – Across Dallas Drive , the AMF Marlow Heights Bowling Alley in the C-S-C Zone.
- West – Strip commercial uses in the C-S-C Zone.

² The property was annexed into the Regional District in 1957. (Exhibit 13, p. 4)

Zoning

(6) The subject property lies within an area governed by the 2013 Central Branch Avenue Corridor Revitalization Sector Master Plan and Sectional Map Amendment. The Sectional Map Amendment retained the property in the C-S-C Zone. The Sector Plan did not include any environmental infrastructural recommendations or guidelines. As a result, woodland conservation, regulated environmental features and noise were evaluated for conformance with the 2000 Heights and Vicinity Master Plan and Sectional Map Amendment. (Exhibit 13,p. 16) After a thorough review for compliance with the 2000 Master Plan, Staff only recommended Applicant provide a Pollution Control Plan approved by the Maryland Department of the Environment (discussed below).

(7) The property lies within the Beech Road focus area, discussed in the 2013 Sector Plan, *supra*. The Beech Road focus area has developed over the past five decades into a small industrial center operating next to “an arterial roadway lined with retail service and restaurant uses.”(2013 Central Branch Avenue Corridor Revitalization Sector Master Plan, p.40) The Sector Plan provided an indepth review and comments on this focus area:

The purpose of examining the Beech Road focus area is to address conflicts between residential, commercial, and industrial land uses; explore opportunities to improve the older commercial strip on St. Barnabas Road (currently characterized by a hodgepodge of commercial uses and negative visual images along the corridor)... and implement the *2010 St. Barnabas-Beech Road Industrial Study and Action Plan* with respect to new standards for development and infrastructure.

The Beech Road focus area is located between Branch Avenue (MD 5), St Barnabas Road, Temple Hill[s] Road, and the Capital Beltway. It includes industrial areas on Beech Road, Stamp Road, Beech Place, Cremen Road, Clifton Road and Beech Way. The area developed in the 1950s and 1960s and was bolstered by its access to Branch Avenue and the Capital Beltway. The past five decades of commercial and industrial development in typical mid- and late twentieth-century suburban forms has resulted in a small, defined industrial center operating adjacent to an arterial roadway lined with retail, service, and restaurant uses. For the purpose of this review, the focus area is divided into two sections based on different land use characteristics – the St. Barnabas commercial corridor and the Beech Road industrial area.

Characterized by typical suburban strip development, the St. Barnabas Road corridor between Temple Hills Road and Branch Avenue contains an array of commercial uses. These include auto sales and storage, auto parts sales, gas stations, fast food restaurants, personal services, and small offices. With development that dates from the 1950s, the commercial corridor now appears in decline with older, obsolete buildings, low-end retail, and many small transient businesses. The visual appearance of the streetscape is poor. The corridor is saturated with large auto-related and other signage competing for drivers' attention. Utility poles and overhead wires crisscross the street, adding to the visual clutter....

The focus area was the subject of a recent study that included property inspections and enforcement. The resulting *2010 St. Barnabas-Beech Road Industrial Study and Action Plan* identified two major issues: the need for improved code enforcement and for public education about the county's zoning and property maintenance standards for commercial and industrial properties. Among the study's major findings was evidence that over half of the businesses in

the area operate without required permits. This means that inspection layers did not take place on properties to ensure compliance with applicable standards. In addition, the lack of widespread property maintenance accounted for almost one-third of study area violations. Higher numbers of violations on commercial properties along St. Barnabas Road; fencing and screening violations; illegal signage; and, lack of landscaping, especially along St. Barnabas Road, were also major findings of the study....

(2013 Central Branch Avenue Corridor Revitalization Sector Plan, pp. 39-41)

(8) The 2014 General Plan, Plan Prince George's 2035, placed the property in the Established Communities. The vision for these communities is "context-sensitive infill and low-to medium - density development."

(2014 General Plan, Plan Prince Georges 2035, p.20)

Applicant's Request

(9) The Applicant wishes to validate a Gas Station that has existed at the site since 1956. It also wishes to bring its freestanding sign into conformance with the requirements of the Code.³ Applicant is currently trading as a Citgo service station, and provided gallonage figures for 2013 and 2014 that indicate it has been operating successfully at the site. (Exhibit 24).

(10) The existing auto repair business was certified as a non-conforming use in 2005 (Permit 32425-2005-11). It is operated as a separate business by a tenant. (Exhibit 3)

(11) Joe Behun, Jr , accepted as an expert in civil engineering, testified that he visited the site and noted that the subject property is more than 300 feet from a lot on which an outdoor playground, library, school or hospital is located. There will be no display or rental of cargo trailers, trucks, or similar uses at the site. There will be no storage junking of wrecked motor vehicles.

(12) The subject property has approximately 140 feet of frontage on, and direct vehicular access to St. Barnabas Road. St. Barnabas Road has a 120 foot right-of-way width. All access driveways will be defined by curbing. There are sidewalks along Dallas Drive and St. Barnabas Road. The latter is 5 feet in width and the former is 6 feet in width.

(13) All gasoline pumps and service appliances are required to be located 25 feet behind the street line. However, the gasoline pumps are 22.5 from St. Barnabas Road and 23 feet from Dallas Drive. Applicant is therefore, seeking a variance from this requirement.

(14) No exterior vending machines are proposed.

³ There is a companion case, DSDS-686, addressing the relocation of the free- standing sign and the canopy signs.

(15) The Site Plan shows the topography of the subject property and adjacent lots for a depth of at least 50 feet.

(16) The Applicant submitted a Pollution Prevention Plan at Staff's request. The Pollution Prevention Plan sets forth the spill prevention and control measures for the site; a clean-up plan in the event that a spill occurs; spill reporting procedures; and, an employee training regimen. The latter is designed to accomplish the following:

The training program is designed to ensure that the employees are able to respond effectively to emergencies by familiarizing them with emergency procedures and emergency equipment systems

In addition the employees training program will address other aspects of the pollution prevention program such as prevention maintenance, inception and monitoring, housekeeping practices, etc.

Employees will be trained on the location and use of housekeeping materials, spill response materials, spill response materials, and personal protective equipment.... All employees will be on the lookout for potential spills and conditions that could lead to direct contact of storm water with polluting materials.

Employees will be trained on pollution prevention procedures according to this plan. Employees will be trained within one week of initial hire and refresher sessions will be conducted on an annual basis, or after a spill incident. Records of the employees' attendance in the training program will be included in personnel files and will be maintained on site.

(Exhibit 20, p.11)

(17) Joseph Del Bazo, accepted as an expert in the area of land use planning, prepared a written analysis, and testified, in support of the application. He offered the following in support of his recommendation of approval:

The Property was annexed into the Regional District in 1957, a year after the Property was originally developed, and was placed in the C-2 Zone. It remained in the C-2 Zone until 2000 when it was rezoned to the C-M via *The Heights Sectional Map Amendment*. In 2008, the Property was placed in the C-S-C Zone by the approval of the Sectional Map Amendment associated with the *Approved Branch Avenue Corridor Sector Plan*, which updated parts of the 2000 Master Plan for *The Heights and Vicinity*. The 2008 plan recommended a revitalization plan be created for the area. Finally, in 2013 the County approved the *Central Branch Avenue Corridor Revitalization Sector Plan* (Sector Plan). In recognition of the long standing commercial use of the Property -- a full service gas station has been in operation on the Property since at least 1956--the Sector Plan recommends the continuation of commercial land use.

The Sector Plan places the Property in the Beech Road Focus Area that includes the long commercial center located along both sides of Saint Barnabas Road. This commercial center was a topic of concern in the Sector Plan, which noted that commercial uses, long standing in the area, had become run down and were in need of upgrading, calling the area "currently characterized by a hodgepodge of commercial uses and negative visual images" (p. 39). Stricter code enforcement and more stringent adherence with county codes was noted as necessary solutions to the problems in Beech Road Focus Area. The Sector Plan also recognized that many of the uses along this

strip were constructed without permits, apparently an enforcement problem back when these structures were built.

A gas station on the subject Property has existed in one form or another since at least 1956. While it is included in the troublesome area noted in the Sector Plan, the current proposal is aimed at bringing the site into compliance with current standards, or in cases where that is not possible, validating those with variance and departure approvals. For the Property that has been developed for more than 55 years, under the circumstances by which the entire commercial strip was developed, surprisingly few variances are needed. The resulting development will have landscaping in excess of many commercial properties along Saint Barnabas and will be code compliant-both goals of the Sector Plan.

Subsequent to the 2013 approval of the Sector Plan and Adoption of the Sectional Map Amendment, the County approved a new General Plan in 2014, *Plan Prince George's 2035* ("Plan 2035"). Plan 2035 updates the 2002 General Plan for Prince George's County. There are no recommendations in Plan 2035 specific to this Property. Plan 2035 generally recommends that new commercial growth be concentrated in several Regional Transit Districts and Local and Suburban Centers. The subject Property is in an Established Community, area defined by Plan 2035 as "**existing residential neighborhoods and commercial area served by public water and sewer outside the Regional Transit Districts and Local Centers,**" and as being "**most appropriate for context-sensitive infill and low- to medium- density development**".

The proposal includes no additional development in the Established Communities Growth Policy Area; it merely validates and updates existing development...

The fact that a thriving, successful gasoline station has operated on the subject Property for at least fifty-nine (59) years, is evidence of the public's need for the station. As the station is located at an intersection, large numbers of customers are served. The station pumped 726,492 gallons in 2013 and 798,646 gallons in 2014. To further accommodate convenience and needs, the existing facility offers three covered pump islands with multi-product dispensers, a three (3) bay service building offering full repair services and a small snack shop. Therefore, the station has proved to be serving the needs of, and be reasonably convenient to, the surrounding community and traveling public.

The gas station has not proven to have been restrictive to the availability of land, or to have upset the balance of land use in the area for other trades and commercial uses since its opening nearly 60 years ago.

(Emphasis in original; Exhibit 41, pp.1-2, and 6)

Variations

(18) The following variations from provisions of the Zoning Ordinance must be approved in order for the Special Exception request to be granted:

- Section 27-358(a)(1) requires 150 feet of frontage on a street with a right-of-way width of more than 70 feet. The subject property has 140 feet of frontage on St. Barnabas Road, which has a right-of-way width of 120 feet. A variance of 10 feet is requested.
- Section 27-462(b) requires the property's side yard to be adjoining a street with a right-of-way width of 70 feet (35 feet from the center line). Dallas Drive only has a 60 foot right-of-way width and a 5 foot variance is requested from this Section.

- Section 27-358 (a)(5) requires access driveways on corner lots to begin at a point not less than twenty (20) feet from the point of curvature. Driveway No. 2 (accessing St. Barnabas Road) begins eight (8) feet from the point of curvature and a twelve (12) foot variance is requested.
- 27-358 (a) (5) requires driveways to be at least 12 feet from the side or rear lot line of an adjoining lot. Driveway No. 1 (accessing St. Barnabas Road) begins 5 feet from the adjacent property and a seven (7) foot variance is needed. Driveway No. 4 (accessing Dallas Drive) begins 5 feet from the lot line and a variance of seven (7) feet is requested.
- Section 27-358 (a) (8) requires gas pumps to be located at least 25 behind the street line. One gas pump (labeled "MPD#1") is 22.5 feet from St. Barnabas Road, and a 2.5 foot variance is requested. Another gas pump (labeled "MPD#3") is located 23 feet from Dallas Drive, and a 2 foot variance is requested.

(Exhibits 33(b) and 38)

(19) Mr. Del Bazo offered the following testimony in support of Applicant's variance request:

So, the first criteria is that the parcel of land has exceptional narrowness, shallowness, shape or existing topographic conditions, or other extraordinary situations. This property is a little over three-tenths of an ... acre, and ... is one of the smallest properties in the neighborhood. It has gotten smaller over time as the rights-of-way have expanded, the St. Barnabas Road right-of-way and the Dallas Drive right-of-way have expanded to impact the property.... So it is.... the smallest corner lot commercial property in the neighborhood, and that's an extraordinary situation on the property.

The second is that the strict application of [Subtitle 27] would result in a peculiar and unusual practical difficulty to, or exception [al] or undue hardship upon the owner. So, these were all area variances, and we look at practical difficulty when we're looking at area variances, so to get into the practical difficulty I just want to run through a quick history of the property. First, again, it's one of the smallest commercial properties, the building was constructed in 1956, the property came into the Regional District in 1957. So, when the building was built there were no Regional District Zoning Ordinance laws affecting it. The curb cuts were added, or were built at that time, and as far back as we can tell from aerial photographs, ...[see Exhibit 43] St. Barnabas Road was two lanes each way [and] ... Dallas Drive is basically the same lanes as it was in 1965, the difference is the rights-of-way have changed.... So, I just wanted to point out because the driveways are the majority of what the variances are for, and where the rights-of-way are dictate the variances that are needed for the gas pumps....

I think when you look at practical difficulty, and you look at the history of this project the fact that it was generally developed prior to the incorporation into the Regional District, and the location of the building, when it was built kind of dictated how it was going to build out, you see, the canopy is right in front of the building, so it's kind of parallel to the building, that's kind of how the property develops as that was set by the building. So, when you look at practical difficulty... I think there is enough unusualness or uniqueness about the property that limits the variance to this property, so substantial justice would be done to both the Applicant and to other owners in the ... District....

And the third criteria are that it won't impair the integrity of the master plan. And again, the master plan wants this area to be upgraded, and the easiest way... [is]... to validate it, have an approved special exception... and it's easier to update through the process....

(June 1, 2016 T. 23-29)

Reconsideration of Variance request

(20) At the reconsideration hearing held on August 1, 2016, Applicant's witness, Joe Behun, Jr., presented a marked up Exhibit that clearly illustrated that Applicant cannot provide *any* setback from the point of curvature for Driveway No. 1 (along St. Barnabas Road) since that point *begins* on a neighboring property. (Reconsideration Exhibit 6) Thus, it was clearly a mistake to not have granted a complete waiver of the provision in Section 27-358(a)(5) that requires the driveway to "begin at a point not less than twenty (20) feet from the point of curvature...."

Technical Staff and Other Agency Comment

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

The property is small in size, constituting only 13,846 square feet in area or 0.32 acres. In addition, it is a corner lot which must, therefore, observe setbacks from two different rights-of-way. In reality, the setbacks are met from the existing street pavement along both frontages, but a 30-foot wide unused portion of ROW along St. Barnabas Road and a mandated 70 foot-wide ROW along Dallas Drive further constrict the developable area of the property. The site was developed prior to its annexation into the Regional District and was a permitted use, either by right or a nonconforming use for many years without the need for a special exception. It was not until 2008 rezoning from the C-M Zone to the C-S-C Zone that this property became once again subject to a special exception, and even then the owner could continue as a nonconforming use if they chose to do so. However, the applicant wishes to legitimize this long-existing use through the special exception process, bringing into conformance the design standards they can meet, relying on the previous design standards where permitted to do so and seeking variances and departures for those they cannot. Collectively, these factors constitute an extraordinary situation which is not of the applicant's making. This first criterion is met....

As a use permitted by special exception, a gas station is generally considered compatible with other users in the C-S-C Zone. The site was developed in the 1950s, subject to the design standards at that time. Over time those design standards have changed and become more refined and the street rights-of-way have widened to the point that the applicant cannot physically meet many of them. In order to meet today's design standards, the entire site would have to be razed and completely rebuilt. Even if they did so given the small size of the site and its numerous constraints it would be difficult to design a station that could meet all of the design standards, in our estimation. Given the long history of this use at this corner, to require the complete redesign of the site would place a peculiar and unusual practical difficulty upon the applicant. The second criterion is met....

The variances will not substantially impair the intent, purpose, or integrity of the 2013 *Approved Central Branch Avenue Corridor Revitalization Sector Plan* which recommends retaining the neighborhood commercial use on the property. The sector plan envisions this area as a community-scaled commercial area that supports the residential neighborhoods by providing locally serving retail, offices, and public uses closely integrated with residential development. The use is permitted by special exception in the

C-S-C Zone and is therefore presumed to be compatible with similarly-zoned surrounding permitted uses. This criterion is met.

The Applicant has met their burden of proof in this instance. Based on the proceeding analysis and finding staff recommends APPROVAL of Special Exception Application No. SE-4758, including variances, subject to the following conditions:⁴

1. Prior to signature approval of the site plan, a copy of an approved Pollution Control Plan shall be submitted into the record of the case.
2. Auto repairs conducted on the site must be limited to those allowed as part of a gas station as defined in Section 27-107.01 of the Zoning Ordinance. A note to that effect shall be added to the site plan.
3. Prior to signature approval of the plan, a note shall be added to the plan addressing Sections 27-358(a)(2).
4. Prior to signature approval of the plan, the applicant shall submit a new Tree Conservation Letter of Exemption to replace the expired letter.

(Exhibit 13, pp. 8, 9, 19-20)

(22) The Historic Preservation and Public Facilities Planning Section reviewed the adequacy of public facilities within the area surrounding the site and found there would be no negative impact on applicable public facilities. (Exhibit 13, pp.67-68)

(23) The Environmental Planning Section recommended approval of the Application, reasoning as follows:

The subject 0.32 acre property is located on the northwest corner of Dallas Drive and Saint Barnabas Road. Saint Barnabas Road is identified as an arterial roadway and Dallas Drive is not identified as a master planned roadway. Since this facility is a non-residential use no noise contour or study is required. A review of the available information indicates that streams, wetlands [and] their associated buffers, floodplain and Primary Management Areas are not located on-site....[T]here are no rare, threatened, or endangered species found to occur in the vicinity of this property....

The site contains no identified Natural Reserve Areas. This site contains an existing gas station that is 100 percent impervious with no on-site vegetation. No woodland conservation is proposed because the site is exempt from the Woodland [and Wildlife Habitat] Conservation Ordinance....

An approved Natural Resource Inventory Equivalence letter (NRI-214-13) was submitted with the review package, which was approved on January 13, 2014. The NRI verifies that no regulated environmental features or woodland occur on the subject property....

The site has an approved Stormwater Management Concept Letter (27351-2014-00) and plan that covers the entire property.... A Pollution Control Plan approved by the Maryland Department of the Environment Oil Control Program is also required per this letter....Prior to the certification of the Special Exception Site Plan, a copy of the Approved Pollution Control Plan for this site must be submitted to DPIE and the Environmental Planning Section....

⁴ The Pollution Control Plan was signed off by the Department of Permitting, Inspections and the Environment, and all other conditions recommended by Staff were addressed by Applicant. *See*, Exhibits 18, 20, and 39(a) – (b).

(Exhibit13, pp. 54-58)

(24) The State Highway Administration noted no objection to the approval of the request. (Exhibit 10(n))

(25) The Department of Permitting Inspections and Enforcement (“DPIE”) noted it had no objection to the Special Exception and Variances requested. (Exhibit 13, pp.61- 62) The Site/ Road Plan Review Division did request that Pollution Prevention Plan be provided, and one was ultimately approved by DPIE. (Exhibits 10 and 20)

APPLICABLE LAW

(1) A Gasoline Station is permitted in the C-S-C Zone upon grant of a Special Exception. In order to receive special exception approval, the Applicant must satisfy the provisions of Sections 27-317 and 27-358 of the Prince George’s County Zoning Ordinance.

(2) Section 27-317 provides as follows:

(a) A Special Exception may be approved if:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

- (1) Where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
- (2) Where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-358 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 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 driveway 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) or 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 restricts the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

(4) 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.

Necessity

(5) 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 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.” I believe 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.

Variance

(6) A variance may be granted if the request satisfies the provisions of Section 27-230(a) of the Zoning Ordinance, which provides as follows:

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

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

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

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

(7) Court cases have held that a variance should not be granted unless the need to justify the request is substantial, and not merely for the applicant’s convenience. Belvoir Farms Homeowners Association v. North, 355 Md. 259, 734 A.2d 227 (1999); Mills v. Godlove, 200 Md. App. 213, 26 A. 3d 1034 (2011).

(8) “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.

(9) Finally, an area variance (such as the ones requested herein) need only satisfy the “practical difficulties” standard. See, Richard Roeser Professional Builder, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2001)

Special Exceptions

(10) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

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

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

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. The instant Application satisfies the following purposes for the reasons provided:

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

The use is one that serves the needs of all County residents that rely on the automobile as a means of transportation.

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 use is one permitted in said Zone. The Sector Plan recommends bringing the commercial properties along St. Barnabas Road up to Code compliance. The

request validates existing conditions but also allows Applicant to update its sign and canopy, making the site more attractive. 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 it is an existing Gas Station and no additional buildings will be constructed.

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

The Gas Station is located amidst several similar commercial uses, thereby limiting the possibility of adverse impact on adjoining development. This purpose is, therefore, met.

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

The use ensures that a certain number of jobs will be provided and that taxes will be paid into the County's coffers.

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, found in Sections 27- 446 and 27-454 of the Zoning Ordinance, since the use is permitted by Special Exception in the Zone; the longstanding success at this location indicates that the Gas Station addresses the needs of residents and businesses in the County if need is defined as "convenient, useful, appropriate"; the use is compatible to the other commercial uses along this stretch of St. Barnabas Road; there is no evidence that the use has had any negative affect upon adjacent properties; the use is not in a residential area; and the use accords with the purposes of the General Plan and Sector Plan. (Sections 27-317(a) (1), 446 and 454)

(3) The instant Application does require the grant of a few variances in order to validate existing structures. Each variance, discussed *supra*, can be granted since the subject property is an unusually small corner commercial lot in the area; all variances are requested to validate development that existed prior to incorporation into the Regional District; it would create a practical difficulty to have Applicant tear everything down in order to come into compliance over 50 years later; and, grant of the variances actually furthers the intent of the General Plan and Sector Plan to have better infill development and bring commercial properties within the Beech Road focus area into compliance with the Code. (Section 27-230(a)) Once the variances are granted the use can be found to be in conformance with the applicable provisions of the Zoning Ordinance. (Section 27-317 (a)(2))

(4) Again, the use conforms to the General Plan's vision of context sensitive infill development and the Sector Plan's wish for commercial properties in the area to come into compliance with the Code where possible. (Section 27-317(a)(3))

(5) The use has been operating successfully at the site since 1956. 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*. (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) Applicant requests a variance from the requirement that the property have 150 feet of frontage on a street with a right-of-way width of at least 70 feet. Although St. Barnabas Road has a right-of-way width of 120 feet, it only has 140 feet of frontage thereon. (Section 27-358(a)(1))

(10) Applicant's witness noted that there are no schools, outdoor playgrounds, libraries or hospitals within 300 feet of the subject property. (Section 27-358(a)(2))

(11) 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. (Section 27-358(a)(3) and (4))

(12) Variances are requested for several of the driveways, as noted *supra*. (Section 27-358(a)(5))

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

(14) The sidewalk along St. Barnabas Road is 5 feet in width; the one along Dallas Drive is 6 feet in width. (Section 27-358(a)(7))

(15) Slight variances are requested to the provisions regarding the setback for two gasoline pumps. (Section 27-358(a)(8))

(16) The repair service is currently occurring on site in an existing building. No new construction is proposed, and the existing building is comparable to others in this commercial corridor. Applicant will obey the restriction concerning repair service and a note has been added to insure that the repairs are restricted to those set forth in the

definition of “gas station” found in Section 27-107.01(a)(99) of the Zoning Ordinance. (Section 27-358(a)(9) and (10))

(17) The 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. There will be no exterior vending machines. (Section 27-358(b))

(18) Applicant understands what must be done upon the abandonment of the gas station. (Section 27-358(c))

(19) 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, and has operated successfully at that location for many years. It does not appear to have upset the balance of land use in the area for other trades and commercial uses, since other businesses in the area are thriving. (Section 27-358(d))

DISPOSITION

Special Exception 4758 and VSE 4758 are Approved.

[NOTE: The Special Exception Site Plan is Exhibit 39 (a) and (b).]