

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

NOTICE OF DECISION

Councilmanic District: 9

S.E. 4729 – Clinton Used Auto Part LLC
Case Number

On the 24th day of December, 2013, the attached Decision of the Zoning Hearing Examiner in Case No. S.E. 4729 was filed with the District Council.

The Zoning Hearing Examiner's decision shall become final 30 calendar days after the above filing date unless:

(1) Written appeal within 30 days of the above date is filed* with the District Council by any person of record or by the People's Zoning Counsel; or

(2) The District Council directs the case be transmitted to the Council for final disposition by the Council.

Zoning Hearing Examiner
County Administration Building
Upper Marlboro, MD 20772
952-3644

*Instructions regarding appeals and oral argument are found on the reverse side of this notice.

Your failure to note an appeal may result in a waiver of your rights to an appeal.

cc: Traci R. Scudder, PO Box 114, Bowie, MD 20720
Persons of Record (11)
Stan D. Brown, People's Zoning Counsel, 1300 Caraway Ct., Suite 101, Largo, MD 20774

INSTRUCTIONS FOR FILING

I. Appeal of the Examiner's Decision Shall Be:

- a) In writing;
- b) In a format in which each ground for appeal is numbered in sequence;
- c) Specific as to the error(s) which are claimed to have been committed by the Examiner;

(The page and paragraph numbers of the Examiner's Decision should be identified.)

- d) Specific as to those portions of the record, including the Hearing Examiner's Decision, relied upon to support your allegation of error(s) committed by the Examiner.

(The Exhibit number, transcript page number, and/or the page and paragraph numbers of the Examiner's Decision should be identified.)

II. Requests for Oral Argument:

If you desire oral argument before the District Council, request must be made, in writing, at the time of filing your appeal.

III. Notification to All Persons of Record:

Your appeal and any accompanying request for oral argument must contain a certificate of service to the effect that a copy thereof was sent by you to all persons of record by regular mail.

(A list of these persons and their addresses is included in this notice of Examiner's decision sent to you herewith or is available from the Clerk to the Council.)

IV. When to File:

Your appeal and any request for oral argument must be filed within 30 calendar days after the Examiner's Decision has been filed with the District Council.

V. Where to File:

Clerk of the County Council
County Administration Building
Upper Marlboro, Maryland 20772
Phone: 952-3600

INSTRUCTIONS FOR REPLY TO A REQUEST FOR ORAL ARGUMENT

If you are notified that another person of record has requested oral argument, you may:

- 1) Participate in the hearing if there is oral argument, and/or
- 2) Reply, in writing, to the District Council, opposition. Copies of any written material to be submitted in support of this opposition position shall be filed with the Clerk and all persons of record no later than five (5) business days before the date of oral argument.

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

SPECIAL EXCEPTION

4729

VARIANCE

4729

DECISION

Application: Vehicle Salvage Yard, Junk Yard and Variance
Applicant: Clinton Used Auto Parts, LLC.
Opposition: Joseph Smith & Sons
Hearing Dates: September 4, 2013, October 9, 2013 and
October 30, 2013
Hearing Examiner: Maurene Epps Webb
Disposition: Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4729 is a request for permission to use approximately 0.69 acre of land in the I-1 (Light Industrial) Zone, located on the southeast side of Delano Road, approximately 725 feet northeast of Old Alexander Ferry Road, also identified as 7801 Delano Road in Clinton, Maryland, to operate a Vehicle Salvage Yard and Junk Yard. Applicant operates a Used Auto Sales Lot on the site, a use permitted by right in the zone. Applicant is also requesting approval of VSE-4729, a variance to Section 27-474(a)(1)(b) of the Zoning Ordinance, for the setback for an existing trailer from the street and an eight-foot-high fence on the property line.

(2) The Technical Staff recommended approval with conditions. (Exhibit 12) The Planning Board chose not to schedule the application for public hearing and adopts the Technical Staff's recommendation as its own. (Exhibit 16(b))

(3) Joseph Smith & Sons appeared not in opposition to the instant request but with concerns that the Application does not appear to address certain criteria that were imposed on Joseph Smith & Sons in its operation of similar uses.

(4) At the close of the final hearing the record was left open to allow the Applicant to submit a revised Site Plan, a memorandum addressing the legality of proceeding without the testimony of an expert in the area of land use planning, and a memorandum addressing the applicability of Section 8-803 of the Maryland Transportation Code Annotated. The last of these items was received on November 14, 2013. This examiner referred the revised Site Plan to Staff for comment. Said comment was received on November 25, 2013 and the record was closed at that time. (Exhibit 38)

FINDINGS OF FACT

(1) The subject property is comprised of a single lot in the Bellafonte Industrial Subdivision, and is served by public water and sewer. (Exhibit 12, p. 48) It is rectangular in shape, approximately 81 feet wide and 370 feet in length, with a partially paved surface and fencing in various stages of disrepair. The front third of the property is occupied by a used auto sales business pursuant to Detailed Site Plan (“DSP”) 02031, approved by the Planning Board on July 18, 2002. (Exhibit 12, p. 4). This use is permitted by right in the zone.

(2) The property is improved with a 400-square-foot office trailer which has an existing permit and was approved in the DSP, despite the fact that its location does not meet the setback requirement from Delano Road. (Exhibit 21) There is also an attached small building not reflected on said permit or the DSP. The rear two thirds of the site is behind a tall fence and is used for open storage of an eclectic mix of vehicles, vehicle parts, scrap metal, and debris.

(3) The subject property is exempt from stormwater management requirements because less than 5,000 square feet are to be disturbed. (Exhibit 8) The subject property is also exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because it is less than 40,000 square feet in size and there are no previously approved Tree Conservation Plans. (Exhibit 9) However, the Letter of Exemption expressly stated that the “use of the property is to use the existing used car lot as a vehicle salvage yard.” (Exhibit 9) The property does not lie within the Chesapeake Bay Critical Area. Staff noted there are no regulated environmental features on the site. (Exhibit12)

Master Plan/Sectional Map Amendment/General Plan

(4) The subject property lies within an area discussed in the 2013 Subregion 5 Master Plan and Sectional Map Amendment (“SMA”).¹ The Master Plan recognized the current use of the property as one consistent with the Air Installation and Compatible Use Zone (“AICUZ”) study for Andrews Air Force Base (Joint Base Andrews). It also recognized the area as one suitable for industrial use. (2013 Subregion 5 Master Plan, p. 32)

(5) The property lies within Accident Potential Zone Area I (“APZ I”) for aircraft operations at Joint Base Andrews. The Subregion 5 Master Plan notes that the federal land use compatibility guidelines developed for APZ 1 “recommend uses such as:

¹ A court order issued by the Circuit Court for Prince George’s County, Maryland on October 26, 2012 reversed and voided the District Council’s approval of the 2009 Subregion 5 Master Plan and Sectional Map Amendment. Accordingly, Staff reviewed the application for compliance with the 1993 Subregion 5 Master Plan and SMA. (Exhibit 12, p. 43) The District Council reapproved the 2009 Subregion 5 Master Plan and SMA upon adoption of CR-80-2013 and CR-81-2013, and renamed it the 2013 Subregion 5 Master Plan and Sectional Map Amendment. Accordingly, this decision cites the most recent document.

industrial/manufacturing, transportation, communication/utilities, wholesale trade, open space, recreation, and agriculture.” (2013 Subregion 5 Master Plan and Sectional Map Amendment, p. 35) The Master Plan further notes:

Over time, some areas in the APZ I have changed from residential uses that are inconsistent to industrial uses that are consistent. One such area is along Poplar Hill Lane and Delano Road. The county has supported these changes provided they comprise contiguous properties, ideally in full blocks, so that intact residential neighborhoods are not broken up by small, piecemeal rezonings. This master plan reinforces the 1993 policy to transition these areas from residential to industrial land uses.

(2013 Subregion 5 Master Plan and Sectional Map Amendment, p. 37)

(6) The 2002 General Plan placed the property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use pedestrian-oriented, medium-to-high density neighborhoods.

Neighborhood/Surrounding Uses

(7) The property is surrounded by the following uses:

- North – A construction company and concrete contractor in the I-1 Zone
- South – Contractor’s offices with outdoor storage and vehicle storage in the I-1 Zone
- East – Undeveloped land in the I-1 Zone
- West – Contractor’s offices with outdoor storage in the I-1 Zone

(8) The Neighborhood is defined by the following boundaries: Piscataway Creek and Joint Base Andrews to the north; Woodyard Road (MD 223) to the south; Piscataway Creek to the east; and Old Alexander Ferry Road to the west. The neighborhood contains a mixture of industrial uses on its western half and some single-family residences and undeveloped wooded lots in the eastern half. (Exhibit 12, p. 5)

Applicant’s Proposal

(9) Applicant purchased the subject property in 2001 and began operating a vehicle sales lot on the front portion of the lot. This use is permitted by right in the zone. Applicant requests permission to add a Vehicle Salvage Yard and Junk Yard to the rear behind a proposed 8-foot-tall fence.

(10) There is an existing 400 square-foot trailer in which Applicant will operate one office for the vehicle sales and another for the requested uses. (October 9, 2013 T. 8-9)

(11) Applicant is not proposing any interior storage for the Vehicle Salvage Yard or Junk Yard. (Exhibit 32) There will be an eight-foot-tall fence around both requested

uses to the rear of the site and around the perimeter of the site, as well. The fence will be made of a non-wood, non-white material. (Exhibit 32)

(12) The hours of operation for the existing vehicle sales use will be from 10:00 a.m. to 5:00 p.m. The hours for the two requested uses will be from 8:00 a.m. to 5:00 p.m. (October 9, 2013 T. 11)

(13) Staff noted that fifteen (15) parking spaces are required for the office trailer, the Vehicle Sales Lot, and the requested uses, and fifteen (15) spaces are provided. (Exhibit 12, p. 7, Exhibit 32) No loading space is required because the only building on site is less than 2,000 square feet in size. (Exhibit 12, p. 7) The original Site Plan did not clearly indicate how the new uses would be accessed without driving through the required spaces. (October 9, 2013 T. 37-39) The revised Site Plan provides a drive aisle in the portion of the site improved with the existing used auto sales business. (Exhibit 32) Applicant testified that no one will be able to access the Junk Yard/Vehicle Salvage Yard:

[T]he whole idea is to send parts to the shops, deliver. But if you're coming, we won't let you go to the back of the yard. We [will] sell you the part at the office.... You won't come to the back. Most we deliver. We have truck to deliver the parts. We won't let anybody walk to the back of the lot.

(October 9, 2013 T. 42-43)

(14) At the hearing held on October 30, 2013, Applicant submitted receipts from the County's Department of Public Works & Transportation ("DPW&T") indicating that Applicant paid the required stormwater concept approval fees. (October 30, 2013 T. 4-6; Exhibits 26(a) – (b))

(15) Applicant submitted copies of agreements with a hauling company and ICC Environmental, LLC. (Exhibit 27(a) and (b)) The former will remove tires and the latter will remove waste oils, fuel and other items from the site.

(16) The requested uses are subject to the provisions of the Landscape Manual since it involves a change from a lower to a higher intensity use. Staff noted that the revised Site Plan satisfied the requisite provisions of the Landscape Manual. (Exhibit 38)

(17) State regulations require a license for certain junk and scrap yards. Section 8-807 of the Maryland Transportation Code Annotated precludes the license if the use "is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway" unless certain screening occurs. Woodyard Road meets the State's definition of primary highway. Applicant submitted information that indicated that its property is in excess of 1700 feet from Woodyard Road. (Exhibit 35) Accordingly, the additional screening is not required.

(18) Applicant expects to employ approximately 10-15 people if its request is approved (Exhibit 13)

(19) Applicant accepts all conditions proposed by staff. (October 9, 2013 T. 10) Applicant does not intend to erect any signs for the requested uses. (October 9, 2013 T. 11). Applicant submitted a revised Site Plan to address staff's recommended conditions. (Exhibit 22)

Variance

(20) Pursuant to Section 27-465 fences taller than 6 feet high shall not be located in any required yard and must meet the setback for main buildings. Applicant is requesting a variance from the requirement in Section 27-465 of the Zoning Ordinance that the 8-foot-tall fence be set back a total of 30 feet from side property lines. The fence is approximately 130 feet from Delano Road, but is on the property line along the side yards.

(21) Applicant is also requesting a variance from the requirement in Section 27-474(a)(1)(b) of the Zoning Ordinance that all buildings be set back 25 feet from the street. The existing trailer is set back 25 feet from the existing street line for Delano Road rather than from the 70-foot ultimate right-of-way.

(22) In support of its request, Applicant notes that the site is very narrow – only 81 feet in width. (Exhibit 32; October 9, 2013 T. 23)

(23) The office trailer would have to be moved an additional 20 feet to satisfy the setback requirements. (October 9, 2013 T. 25-26). The required fence is directly on the property line. It must also meet the setback requirement of 30 feet from any side yard (although the footnote does provide that it may be one (1) or two (2) side yards for a lot of 30 feet). (Section 27-474(b), fn.5) Applicant states that the trailer has been approved by the County at this location several times in the past, and it would be both unfair, and a hardship, to require it be moved.

Requirement for expert testimony

(24) Applicant presented the testimony of a witness that was qualified as an expert in landscape architecture but not as a land use planner. This witness prepared the Site Plan (and/or assisted in the preparation thereof). People's Zoning Counsel argued that a land use planner is a required witness in a special exception case, and I left the record open to allow Applicant an opportunity to address this argument.

(25) On November 14, 2013, Applicant submitted a memorandum on the issue. (Exhibit 30) Applicant's position is that in the instant case testimony from an expert land use planner was unnecessary. Applicant proffered testimony from a witness accepted as an expert in landscape architecture who explained why the Site Plan satisfied the criteria applicable to Junk Yards and Vehicle Salvage Yards. The Technical Staff

provided a report that detailed how the Application met all requirements of the Zoning Ordinance. Staff also noted that the revised Site Plan met all of its recommended conditions.

(26) Research failed to reveal the existence of any law that would mandate testimony from an expert. Given the expert testimony from a landscape architect and the Technical Staff's analysis "it has been demonstrated by the Applicant and his witnesses that the proposed junk yard and salvage yard conforms to the applicable master plan, and are compatible with the neighborhood ..." and "Applicant has met his burden of proof ..." (Exhibit 30, p. 3)

Opposition's Comment

(27) Joseph Smith & Sons appeared at the hearing, not exactly in opposition, but with the intent to express the concerns it has with the request. (October 9, 2013 T.4) It operates two scrap metal recycling facilities (salvage yards and junk yards) in the County – one on Kenilworth Avenue and the other in College Park. (October 9, 2013 T. 56) Its first concern involved perceived deficiencies in the stormwater approval. The stormwater concept approval letter originally included some confusing language as to stormwater fee paid and whether the requests are exempt from certain stormwater requirements, including a pollution plan. (Exhibits 8 and 16(e); October 9, 2013 T.13-16) The opposition believed that "for all [the requested uses] to intersect at one site" it is incumbent upon Applicant to show its pollution plan, all setbacks and the fence "to make sure it all fits". (October 9, 2013 T. 17)

(28) The opposition also questioned why Applicant's Site Plan does not include all of the information that Joseph Smith & Sons was required to have on its approved Site Plans for its similar businesses. (October 9, 2013 T. 59-64) In particular, a witness for the opposition who serves as compliance officer for the company noted that the vehicles in the salvage yard would need to be drained of certain fluids, and there must be protections in place to guard against spills and combustion. (October 9, 2013 T. 62) Moreover, certain buffering must be in place to guard against off site stormwater pollution.

(29) Finally, the opposition had concerns that allowing a Junk Yard and a Vehicle Salvage Yard at the site would allow it "to be a complete metal recycling yard." (October 9, 2013 T. 70) If that is the intent, the Site Plan does not show how customers could safely navigate in the two Yards.

(30) Applicant submitted information to address most of Joseph Smith & Sons' concerns.

Agency Comment

(31) The Department of the Air Force submitted comment noting that the property is located within APZ I, and within the Joint Base Andrews Naval Air Facility Washington's DNL 70-74 dB Noise Contour. It concluded that the proposed Vehicle Salvage and

Junk yard is a compatible land use in both the Accident Potential Zone and the Noise Contour. (Exhibits 16 (f)-(h))

(32) The Countywide Planning Division of the Prince George’s County Planning Department opined that the request “will have no impact on public facilities.” (Exhibit 16(i)) The Community Planning Division noted that the use is an industrial use in compartment with the recommendations of the Subregion V Master Plan. (Exhibit 12, p. 44)

(33) The Technical Staff noted that there are no regulated environmental features of the site. It also reiterated that the requested Junk Yard will be required to satisfy state regulations (Department of Transportation, Subtitle 04, Chapter 08, Junkyard Licensing and Control Authority).

(34) In its review of the variance request Staff provided the following analysis:

The subject property is unusually long and narrow, being only 81 feet in width yet 370 feet in length. If the applicant were to meet the 30-foot setback proscribed by the code, the resulting area within the fence available for vehicle salvage would be 21 feet in width. This is less than the required width for a driveway to serve the area. As to the 25-foot setback required for the sales trailer, it should be noted that three times the trailer location has been approved by the county, once through the certification of a DSP and twice through the approval of permits.

* * * *

Requiring the 30-foot setback for the fence would result in an undue hardship to the applicant. Because the resulting area would be so narrow, it would make it unusable as a vehicle salvage or junk yard which is otherwise permitted in the zone and reasonable for this location. Similarly, requiring the applicant to move the existing trailer to meet the 25-foot setback from a deemed 70-foot right-of-way for Delano Road is not necessary or reasonable. The applicant placed the trailer in this location relying on three separate approvals by the county. To insist that he now disconnect the trailer from utilities and move it 20 feet further into the site would be an undue hardship.

* * * *

The variance for the fence setback will not substantially impair the intent, purpose, or integrity of the Subregion V Master Plan and SMA, which recommends industrial/employment uses for the property. A similar variance is required for virtually every vehicle salvage or junk yard due to the requirement for an eight-foot-high fence around the perimeter of the site. The use is permitted by special exception in the I-1 Zone and is therefore presumed to be compatible with the surrounding area. This criterion is met.

* * * *

The variance for the setback for the location of the trailer and eight-foot-high fence being sought by the applicant is caused by unique circumstances, and strict application of the

requirement would result in practical difficulties to the applicant. Because the applicant has met the criteria for a variance, the variance should be approved.

(Exhibit 12, pp. 6-7)

(35) The Technical Staff found that the proposed use generally is consistent with the provisions of the Zoning Ordinance ,as well as the vision of the 2002 General Plan and conforms to the general land use recommendations of the 2009 Master Plan and SMA :

The proposal for a junk yard and vehicle salvage yard conforms to the land use recommendations in the Subregion V Master Plan and SMA for employment land use. The proposed use will not be visible nor does it use the internal streets of a residential neighborhood. All of these facts point to the conclusion that it would not substantially impair the integrity of the master plan or the General Plan....

The proposed vehicle salvage yard and junk yard use at the site will not detract from the established character of this industrial neighborhood. Like any special exception uses could have an impact on the health, safety, or welfare of residents or workers in the area, it is not more perceptible in this particular case nor would it exacerbate the admittedly somewhat depressed condition of the area. The applicant will be adding landscaping and fencing to the site and the dismantling activity takes place out of view of surrounding properties....

As noted, the subject property is within one of the most industrial areas in Prince George's County. It is located within a light-industrial enclave with no residential development in the vicinity, at the end of the flight path for Joint Base Andrews. Existing uses in the immediate area in which the site is located include contractor's offices, outdoor storage, and vehicle storage lots. Thus, the location and operation of the subject vehicle salvage yard in the area is consistent with the existing industrial developments in the area and should not be deleterious to the use and enjoyment of adjacent properties.

(Exhibit 12, p. 9)

(36) Staff had an opportunity to review the revised Site Plan and stated that it met all recommendations, and satisfied the Interim Land Use requirements imposed on properties in proximity to Joint Base Andrews. (Exhibit 38) It ultimately recommended approval of the Application, subject to conditions.

(37) The Department of Permitting, Inspections and Enforcement ("DPIE") initially commented that the "proposed salvage yard activities constitute a stormwater hotspot [and] an approved Stormwater Management Concept detailing the implementation of a stormwater pollution prevention plan is required." (Exhibit 16(e)) However, it submitted a revised comment that superseded its original one, and noted that "DPIE has no objection to the request for a junk yard and vehicle salvage yard" at the site. (Exhibit 28)

(29) The Health Department offered the following comment:

There is what appears to be an existing small scale junk yard/vehicle salvage yard operation on the site. During my cursory site investigation visit I observed

multiple stacks of tires, auto/engine parts laying around, and what appeared to be ongoing auto repairs; although no evidence of significant environmental health concerns.

My Department's prior comments on cases such as this were typically limited to an advisory notice about registration/permitting of any proposed degreasing operations with MDE. Since the last time I was personally involved in one of these junk/vehicle salvage yard cases, I've become aware of additional MDE regulatory requirements, across multiple different programs, for handling of waste oil/antifreeze, scrap tires and mercury switch recycling at this type of facility. Accordingly, I am considering a more general comment advising that the applicant must comply with all registration/permitting requirements imposed by MDE on this type of facility....

(Exhibit 12, p. 48)

LAW APPLICABLE

(1) Section 27-107.01(a)(124) of the Zoning Ordinance defines a "Junk Yard" as

Any land or "Building" used for the sale, storage, or collection of abandoned, dismantled, discarded, demolished, or worn out scrap materials, other than materials from motor vehicles, "Trailers," and "Mobile Homes." The term does not include "Vehicle Salvage Yards" and "Recycling Plants." Any land or "Building" used for the collection, storage, and shipping of recyclable paper, but no other scrap material, is not a "Junk Yard."

(2) Section 27-107.01(a)(252) of the Zoning Ordinance defines a "Vehicle Salvage Yard" as

A facility for the reclamation or storage of wrecked or abandoned vehicles or parts from vehicles, "Trailers," or "Mobile Homes," which may include the sale of the parts.

(3) A Vehicle Salvage Yard and a Junk Yard are permitted uses in the I-1 Zone pursuant to the approval of a Special Exception in accordance with Sections 27-317, 27-367 and 417.03 of the Zoning Ordinance.

(4) 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.

(5) Section 27-367(a) provides as follows:

(a) A junk yard may be permitted, subject to the following:

(1) The use shall be enclosed by a solid, slightly light-tight wall or fence at least eight (8) feet high, and found to be satisfactory by the District Council;

(2) The fence shall not be constructed of corrugated metal or fiberglass or sheet metal;

(3) Outdoor storage shall not be visible from the ground level beyond the fence; and

(4) Interior storage shall be located in a fireproof building.

(6) Section 27- 417.03(a) provides as follows:

(a) A vehicle salvage yard may be permitted, subject to the following:

(1) The use shall be enclosed by a solid, slightly, light-tight wall or fence at least eight (8) feet high, and found to be satisfactory by the District Council;

(2) The fence shall not be constructed of corrugated metal or fiber glass, or sheet metal;

(3) Outdoor storage shall not be visible from the ground level beyond the fence; and

(4) Interior storage shall be located within a fireproof building.

(7) A variance may be granted if it satisfies the provisions of Section 27-230(a) of the Zoning Ordinance. That Section 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.

(8) The request must also satisfy the purposes of the I-1 Zone, set forth in Section 27-469(a) of the Zoning Ordinance:

(a) **Purposes.**

(1) The purposes of the I-1 Zone are:

(A) To attract a variety of labor-intensive light industrial uses;

(B) To apply site development standards which will result in an attractive, conventional light industrial environment;

(C) To create a distinct light industrial character, setting it apart from both the more intense Industrial Zones and the high-traffic-generating Commercial Zones; and

(D) To provide for a land use mix which is designed to sustain a light industrial character.

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

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

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

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are listed in Section 27-102(a) and Special Exception 4729 is in harmony with the applicable purposes, for the reasons provided:

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

By operating a Junkyard and Vehicle Salvage Yard in an industrial zone, the Applicant is providing a service to members of the public who need vehicle parts or wish to salvage old or destroyed vehicles. It is, therefore, promoting the health, safety, convenience and welfare of the present and future inhabitants of the County. Morals and comfort are not impacted by the Applicant’s proposal.

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

The 2013 Subregion 5 Master Plan and SMA recommended low intensive, industrial land use for the area due to its location within the Joint Base Andrews Accident Potential Zone. The requested uses satisfy this criteria. Accordingly, this purpose is met.

- (3) *To provide adequate light, air, and privacy;*

The Applicant’s proposal does not impact any residential uses. There are no privacy issues as the subject property and those properties adjoining it are within the I-1 Zone.

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

Applicant will be providing landscaping and attractive fencing. The adjoining uses are also industrial. No adverse impact will result from the requested use of the subject property.

- (6) *To protect the County from fire, flood, panic, and other dangers;*

The continued use of the site with no additional construction will protect the County from fire and other potential dangers. The property is not in a floodplain.

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

Continued use of the property is a positive economic development activity that provides employment and broadens the tax base.

- (8) *To prevent the overcrowding of land;*

The request does not include any new construction. The site is not overcrowded.

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

The use will be designed in a safe manner and will not attract vehicular trips that will result in an unacceptable level of service on the adjacent roadways. It, therefore, meets this purpose.

- (10) *To insure the social and economic stability of all parts of the County;*

By continuing the use that has successfully operated on site for many years, and adding two compatible uses, Applicant is furthering the social and economic stability of Prince George's County by providing uses of benefit to the motoring public.

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

(2) The purposes of the I-1 Zone are listed in Section 27-469 (a) of the Zoning Ordinance:

(a) **Purposes.**

(1) The purposes of the I-1 Zone are:

(A) To attract a variety of labor-intensive light industrial uses;

- (B) To apply site development standards which will result in an attractive, conventional light industrial environment;
- (C) To create a distinct light industrial character, setting it apart from both the more intense Industrial Zones and the high-traffic-generating Commercial Zones; and
- (D) To provide for a land use mix which is designed to sustain a light industrial character.

The Application satisfies these purposes since Applicant is requesting two light industrial uses in an industrial area, and it will employ several individuals if the uses are permitted. (Section 27-469 (a))

(3) Once the variance requests are granted, and the conditions met, the proposed uses will be in conformance with all applicable requirements and regulations of Subtitle 27 of the County Code. (Section 27-317(a)(2))

(4) The proposed uses are light industrial uses envisioned for the property in the Master Plan. (Section 27-317 (a)(3))

(5) The proposed use of the subject property, surrounded primarily by industrial uses on industrially-zoned properties, will have a positive effect on the health, safety and welfare of residents or workers in the area. (Section 27-317(a)(4))

(6) The continuation of an active use on the subject property along with the proposed landscaping will enhance the use or development of adjacent properties and the general neighborhood. (Section 27-317(a)(5))

(7) A Tree Conservation Plan is not required as the site is less than 40,000 square feet in size and does not have a previously approved Tree Conservation Plan. (Section 27-317(a)(6))

(8) There is no proposed construction nor are there any regulated environmental features on site that could be impacted. (Section 27-317 (a)(7))

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

(10) The junk yard and vehicle salvage yard will be enclosed by a solid, vinyl, non-white fence that will be eight (8) feet in height. (Section 27-367 (a)(1) and (2); Section 27-417.03 (a)(1) and (2)) The outdoor storage shall not exceed the height of the fence. (Section 27-367 (a)(3); Section 27-417.03 (a)(3)) There will not be any interior storage for either use. (Section 27-367 (a)(4); Section 27-417.03(a)(4))

(11) The subject property is exceptionally narrow, especially as compared to the majority of the surrounding lots. (Exhibit 12, p.15) It would be unreasonable to request Applicant remove a trailer that has been approved by the County on several occasions at its current location. While it is not true that the fence must be set back thirty feet on both side yards, any additional set back would severely hamper the ability to operate the requested uses. The fence and the trailer do not negatively affect the neighboring

properties nor do they impair the intent of a Master Plan that recognized industrial uses for the site. Requiring Applicant to move them would result in an unusual practical difficulty. (Section 27-230(a))

DISPOSITION

Special Exception 4729 and Variance 4729 are APPROVED, subject to the following conditions:

1. Prior to the issuance of permits, the Applicant shall revise the Site Plan to show the following:
 - (a) Outline the entire Special Exception area in red, as required in the Zoning Ordinance.
 - (b) Add a note to indicate the hours of operation for all uses.
 - (c) Add a note that states that no member of the general public is allowed within the Junk Yard or Vehicle Salvage Yard.
2. The revised Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record.
3. Prior to the issuance of permits, Applicant shall submit a revised Letter of Exemption to the Woodland and Wildlife Habitat Conservation Ordinance that specifically exempts all of the uses proposed on the subject property. The revised Letter of Exemption shall be submitted to Office of the Zoning Hearing Examiner for inclusion in the record.
4. The height of the outdoor storage shall not exceed the height of the eight-foot-high fence. This shall include stacked vehicles awaiting salvage. Any existing material on-site which would be visible beyond the fence at ground level shall be removed.
5. Vehicle fluid recovery and disposal and the scrapping of tires shall be done in strict compliance with all state and federal regulations.
6. Vehicles for sale shall not be displayed in parking spaces.

(Note: The Special Exception Site and Landscape Plans is Exhibit 32)