

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

**SPECIAL EXCEPTION
4575/02**

AMENDMENT OF CONDITION

DECISION

Application: Amendment of Conditions for a Gas Station with a Food or Beverage Store
Applicant: 12800 Old Fort Road, LLC
Opposition: None
Hearing Date: March 31, 2015
Examiner: Joyce B. Nichols
Disposition: Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4575/02 is a request to amend two (2) Conditions of an approved Special Exception for a Gas Station, in conjunction with a Food or Beverage Store, a permitted use, on approximately .72 acre of land, in the C-S-C (Commercial Shopping Center) Zone, located in the southeast quadrant of the intersection of Indian Head Highway (MD 210) and Old Fort Road, also identified as 12800 Old Fort Road, Fort Washington, Maryland, governing the hours of operation and lottery sales.
- (2) No one appeared in opposition to the instant Amendment request.
- (3) The Technical Staff recommended approval of the request to delete Conditions 14 and 15 from the Conditions of Approval of S.E. 4575. (Exhibit 15)
- (4) At the conclusion of the evidentiary hearing the record was kept open for the inclusion of additional documents, upon receipt of which the record was closed on April 13, 2015.

FINDINGS OF FACT

- (1) The Decision of the Zoning Hearing Examiner approving S.E. 4575 for a Gas Station became final and effective September 30, 2008. (Exhibit 4) The Approval was subject to 18

conditions and the Site Plan included a Food or Beverage Store which is a permitted use.

(2) The two Conditions of Approval which are the subject of the instant Application and are requested to be deleted are as follows:

14. The hours of operation for the Gas Station are daily from 6 AM to 12 AM. The hours of operation for the service bays are Monday through Friday from 6 AM to 5:30 PM.
15. There will be no lottery sales on the property.

(3) In 2013 the Applicant received approval of ROSP 4575/01 for a minor revision to convert two service bays to a convenience store, to relocate a canopy and pumps, to relocate parking and loading spaces, and to add a 240 square foot addition to the approved Gas Station and Food or Beverage Store. (Exhibit 22)

APPLICABLE LAW

(1) §27-324(a) provides as follows:

- (a) The District Council may (for good cause) amend any imposed condition or approved site plan without requiring a new application if the amendment does not constitute an enlargement or extension of a Special Exception use.

CONCLUSIONS OF LAW

(1) The subject property is surrounded by the Potomac Village Shopping Center and is across Old Fort Road from a commercial office complex. The 24 hour operation of the Gas Station and Food or Beverage Store will not adversely impact either residents or businesses in the neighborhood. Indeed, since this is the only Gas Station and Food or Beverage Store on the northbound side of Indian Head Highway (MD 210) from Charles County to I-495 (the Capital Beltway), it will be providing a benefit to northbound travelers on this route.

(2) Lottery sales are a customary and incidental use/amenity offered in Food or Beverage Stores. Given the size of the Food and Beverage Store, and that there was no evidence or testimony presented that lottery sales would be harmful to the community, it is concluded that lottery sales would be conducted in an orderly manner and would not create an adverse impact on the approval use or its environs.

RECOMMENDATION

Approval of Special Exception 4575/02, subject to the following Conditions:

1. All four (4) sides of the building located on the subject property (the “Station Building”) shall be covered with EIFS to match the EIFS (in both texture and color) used on the buildings located on the Shopping Center property (The “Shopping Center Building”) (See Exhibits 46, 47, 53 and 63).

2. The Station Building shall include the added cornice and metal coping cap of the same materials and colors used on the Shopping Center Building.
3. The Station Building shall include an awning in the same colors and fabric as the awnings on the Shopping Center Building.
4. That part of the Station Building above the convenience market and/or office shall be adorned with lighting fixtures identical to the green goosenecks located on the Shopping Center Building.
5. The signage on the Station Building shall be individually mounted, non-lit, plastic formed letters identical to the signage on the Shopping Center Building. If a nationally branded company (“National Company”) operates within a convenience store located at the Subject Property (e.g., Dunkin Donuts, Subway, etc.), then, to the extent such National Company requires that its standard signage be displayed on the front of the Station Building, the owner of the Station Property shall be permitted to install such standard signage, provided, however, that the size of such signage is in scale with the signage on the Shopping Center Building. The proposed freestanding sign shall be reduced in area to meet the maximum allowable square footage of 112.25 square feet.
6. The site lighting at the Subject Property shall match, as nearly as possible, the light poles and fixtures (i.e., by appearance, color, type and manufacturer) located at the Shopping Center Property, except the poles at the Station Property may be lower in height than those on the Shopping Center Property and contain fewer than three (3) fixtures per pole.
7. The owner of the Subject Property shall use best efforts, subject to the requirements of its agreement with Texaco, to wrap the poles of any free-standing signage to match the materials and colors of the poles on the free-standing sign at the Shopping Center Property.
8. The dumpster enclosure at the Subject Property shall be made of brick and the color shall match the Station Building as modified in accordance with the foregoing conditions.
9. The existing fence surrounding the Subject Property shall be removed by the earlier of (i) one (1) year from the date of final approval of the S.E. 4575 or (ii) that date a gasoline station and/or auto repair shop opens for business at the Subject Property. No new fence shall be constructed on the Subject Property.
10. All rooftop equipment on the Station Building shall be screened from the view of persons standing anywhere on the Shopping Center Property.
11. The existing storage shed at the Subject Property must be removed by the earlier of (i) one (1) year from date of final approval of the S.E. 4575 or (ii) that date a gasoline station and/or auto repair shop opens for business at the Station Property. Notwithstanding the foregoing, the shed may be replaced with a shed of the same size or smaller, provided such replacement

- shed matches, in materials and color, the Station Building as modified in accordance with the foregoing conditions.
12. No more than eight (8) vehicles at one time may be parked overnight at the Subject Property.
 13. No vehicle may be parked in, on, or at the Subject Property for more than seventy (72) consecutive hours.
 14. The Site Plan must show the location of the proposed future ramp from MD 210 to Old Fort Road in conformance with the 2006 South Potomac-Henson Creek Master Plan and the mapping from the MD 210 Corridor Transportation Study by the SHA. No new structures shall be erected in this area.
 15. The Site Plan shall be revised to outline the area of the Special Exception in red.
 16. Applicant shall provide a copy of the revised Letter of Exemption to the requirements of the Woodland Conservation Ordinance to replace the expired copy in the record.
 17. A copy of the certified site plan for this case shall be submitted into the record for the approval to build within the right-of-way.
 18. Prior to plan certification the site plan shall be revised to provide the following:
 - a. Remove the reference to Section 27-572.
 - b. Show an 80-foot-wide right-of-way for Old Fort Road South.
 - c. Relocate the proposed freestanding sign to meet the ten-foot setback from the ultimate right-of-way (ROW) along Old Fort Road South.
 - d. Relocate the diesel pump to meet the 25-foot setback from the special exception boundary line.
 - e. Provide the height of the shed, food and beverage store and proposed addition.
 - f. Show screening of the loading space through the use of landscaping in accordance with Section 4.4, Screening Requirements of the 2010 Prince George's County Landscape Manual.
 - g. Add a note which references the approved variance to Section 27-358(a)(7).