

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

**SPECIAL EXCEPTION
AND
VARIANCE
4772**

DECISION

Application:	Gas Station, Food or Beverage Store, Car Wash, Variance and Alternative Compliance (AC-17018)
Applicant:	Clearview 6308 LLC/Sunoco Car Wash
Opposition:	None
Hearing Dates:	October 17, 2018 December 12, 2018
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4772 is a request to add a 768-square-foot Car Wash to a 0.695 acre of C-S-C (Commercial Shopping Center) zoned land within the M-I-O (Military Installation Overlay) Zone that is improved with a Gas Station and Food or Beverage Store.¹ The Gas Station is permitted pursuant to SE-1452 and a Food or Beverage Store is also permitted upon approval of a Special Exception in the C-S-C Zone.² As this request is a major revision to the prior approvals all uses are reviewed as a new application. VSE-4772 is a request for a variance from provisions in Section 27.358(a)(5) pertaining to the access driveways for the existing Gas Station. Applicant also requests alternative compliance to the provisions found in Section 4.7-1 of the Landscape Manual. (AC-17018)

(2) The subject property is located on Allentown Road (MD 337), approximately 1/8th mile (320 feet) south of its intersection with Branch Avenue (MD 5), and is identified as 6308 Allentown Road, Temple Hills, Maryland.

(3) The Technical Staff recommended approval of the Application with conditions. (Exhibit 19(a)) The Planning Board chose not to hear the Application and accepts Staff's recommendation as its own.

(4) No one appeared in opposition to the instant request.

¹ The Applicant filed a companion application, DPLS-438, for the waiver of one loading space and six parking spaces. This request has been approved by the Planning Board and is pending before the District Council.

² The Food or Beverage Store was permitted by right in the C-S-C Zone at the time it was constructed.

FINDINGS OF FACT

Subject Property

(1) The subject property is an oddly-shaped rectangular area of land known as Parcel A, recorded in Plat Book WWW 63-36. (Exhibit 33) The site has approximately 157.78 feet of frontage on Allentown Road (MD 337). It is accessed from 2 two-way driveways.

(2) The subject property is currently improved with a Gasoline Station with four fueling stations, a 1408-square-foot-canopy, three underground storage units and eight (8) gasoline pumps, a 1,900-square-foot Food or Beverage Store, and a free-standing sign. Both uses are permitted by Special Exception in the zone. Applicant proposes no revisions to the existing Gas Station and Food or Beverage store, but requests approval to construct a 768-square-foot Car Wash. Thirteen parking spaces are required on site for the combined uses. Applicant has provided seven. It has received approval from the Planning Board for a departure from the parking and loading standards. (DPLS 438) (Exhibit 44)

(3) The subject property is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance because it is less than 40,000 square feet in area and does not have a previously approved Tree Conservation Plan. (Exhibit 7) There are no streams, wetlands or 100-year floodplain on the site and the site does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Exhibits 27(e) and 32)

(4) The subject property lies within the M-I-O Zone. It is included within the boundaries of the area subject to height restrictions but is not subject to any other Impact Map. The proposed uses are a maximum of 15' in height and, therefore, will be far below the height restrictions of the zone. (Exhibits 19(a), p. 52; 27(e); and 32, pp. 16-17)

(5) The Applicant has sought alternative compliance to the requirements of the Landscape Manual (AC-17018). The Planning Director has recommended approval of this request, as discussed below.

Surrounding Property/Neighborhood

(6) The subject property is surrounded by the following uses:³

- To the north, a carpet store and Masonic temple in the C-S-C Zone;
- To the south, a Potomac Electric Power Company ("PEPCO") utility station in the C-S-C Zone;
- To the west, Allentown Road (MD 337) in the C-S-C Zone;
- To the east, Old Branch Crossing Shopping Center in the C-S-C Zone.

³ The record includes exhibits that also identify Allentown Road to the east of the site and Old Branch Shopping Center to the west.

(7) This Examiner accepts the neighborhood defined by Applicant's witness. It has the following boundaries:

- | | | |
|-----------------|---|--|
| North: | - | Allentown Road and the commercial properties adjacent thereto on the north |
| South and West: | - | Allentown Way and the commercial properties adjacent thereto on the south and west |
| East: | - | Branch Avenue (MD 5) |

(Exhibit 32)

Master Plan/Sectional Map Amendment

(8) The subject property lies within Planning Area 76B, an area governed by the 2013 Central Branch Avenue Corridor Revitalization Sector Plan. This Sector Plan designated the site and almost the entire neighborhood for "Residential Mixed Use". The Plan also referenced the possible future bus rapid transit stop in the area as an impetus to development of an arts district (recommended in the prior Master Plan). (2013 Central Branch Avenue Corridor Revitalization Sector Plan, pp. 50-52, Exhibit 46) The Plan did not include a Sectional Map Amendment. Accordingly, the property retained its C-S-C zoning.

(9) The 2014 General Plan ("Plan Prince George's 2035") places the property within the Established Communities Policy area. The vision for Established Communities is "context-sensitive infill and low - to medium – density development." (2014 General Plan, p. 20)

(10) The Generalized Future Land Use Map designates the subject site for mixed use. (2014 General Plan, Map 10, p. 101) "Mixed Use" is defined as "[a]reas of various residential, commercial, employment and institutional uses." (2014 General Plan, p. 100) Additionally, "[m]ixed use areas may vary with respect to their dominant land uses, i.e. commercial uses may dominate in one mixed-use area, whereas residential uses may dominate in another." (2014 General Plan, p. 100)

(11) All other Functional Master Plans are not impacted by the requested uses. (Exhibit 32, p. 7)

Applicant's Request

(12) Mr. Nikolaev is the sole member of Clearview 6308 LLC. He purchased the subject property in February 2013. Clearview 6308 LLC has been issued a Certificate in Good Standing to transact business within the State. (Exhibit 40)

(13) The Applicant wishes to add a 768-square-foot Car Wash to the existing uses on site (noted above).⁴ No physical improvements/revisions are proposed to any existing use.

(14) Applicant provided photos of the site which show the existing signage, Food or Beverage store, pumps and views of the property from various angles. (Exhibits 34(a)-(f)) Applicant also submitted architectural elevations for the proposed Car Wash. (Exhibit 41) The construction materials will be gray concrete block and stucco, similar to that used on the adjacent Food or Beverage Store, and compatible with other development nearby. (Exhibit 19(a), p. 10; T. 24-26)

(15) Applicant offered the following testimony in support of the instant request:

[There] is currently an existing Sunoco Gas Station, we have one building and also the canopy with four islands or eight pumps, so four dispensers, [with] two pumps on each side, a total of eight pumps. Inside the store we sell tobacco, so ... just prepackaged food. Nothing cooked.... Non-alcoholic beverages and the lottery....

On the north side of us is the Allentown Road and across the street from that is the 7-11, in the small shopping center. On the south of us is the large shopping center which has multiple tenants and on the west side is the [PEPCO] transformer station ... and on the east side is ... a carpets and flooring business....

So, we're proposing to add a carwash to an existing gas station and convenience store. It would be built, if approved, on the west side of the building and while it is being constructed the operations would not cease at the gas station and convenience store. We are planning to build [a] ... single bay, ... 768 square feet of area of single bay building, freestanding building. And a car would pull inside and it would be an automatic carwash probably by Autec or by Ryko [phonetic]. [I]t would wash your car around you and on the green light you exit and that's it. We would have dryer blowers as well, and I don't think we can add the full service of people hand washing it....

[The building will] be constructed out of concrete block and ... it's going to be a straight roof. And the doors will be vinyl and the siding ... same as the existing building which ... [is] the stucco over the concrete blocks.

(T. 11-12, 20-21, 25)

(16) The Special Exception Site Plan will be revised to show that the entrance lane for the Car Wash will be reversed to have the entrance lane adjacent to the carpet store and not have the entrance be closer to the PEPCO property. (Exhibit 27(e); T. 32-34) As designed a concern was raised that customers would not be able to exit the queue to the

⁴ As a result of the approval of the earlier special exception, (SE-1452 and revision thereto) the Applicant notes that the District Council has already found that a Gas Station and Food or Beverage Store at the subject property meet the requirements of Section 27-317, 27-355, and 27-358 of the Zoning Ordinance.

Car Wash once you enter the “loop” access beside and to the rear of the Food or Beverage Store. Applicant explained that there will be signage at the beginning of the queue as well as the machine that is punched to pay for the Car Wash and receive the code that will be needed to enter the Car Wash, so all will be well aware not to proceed if they don't intend to have their car serviced. (T. 34-35).

(17) Mark Ferguson, accepted as an expert in the area of land use planning, testified on Applicant's behalf and prepared a written Land Planning Analysis which addressed compliance with applicable provisions of the Zoning Ordinance. (Exhibit 32) The prepared analysis provided the following reasoning in support of his conclusion that the Special Exception should be approved:

The proposed use for ... SE-4772 is the addition of a car wash to the side of the existing ... building and the construction of a new access lane which wraps around the existing building to serve the proposed car wash....

The criteria for approval of a Special Exception for a gas station and a car wash in the C-S-C Zone are the general criteria for the approval of a Special Exception [Section] 27-317(a). There are no specific criteria for a car wash, but because this is a major revision the specific criteria for approval of a gas station [Section] 27-358 are applicable....

The existing gas station itself, namely the existing building, pumps, canopy and entrances, will not be altered; the proposal is to add the new car wash to the edge of the existing building, with a new access lane looping around behind it. The Special Exception Site Plan reviewed by this planner indicates that the new access lane will serve as an egress land and no queueing lane would be provided; if the equipment is instead flipped around, it can accommodate (at least) seven cars, thus promoting the health and safety of the present and future inhabitants of the County by providing for the safe and convenient operation of the car wash and the accommodation of the public....

The continued existence of a gas station use at the subject site which has existed for more than 50 years is ample evidence that the use has been convenient, useful, appropriate, suitable and proper. Its location in a commercial area in the immediate vicinity of the interchange of an arterial roadway (Allentown Road) with a freeway (Branch Avenue) is suitable and appropriate, as it is convenient and useful to the substantial traffic (Allentown Road, 2016 ADT: 20,018 vehicles per day, east of Temple Hill Road) which passes the site....

Because the proposed use is a renewal of a use which has been existing at the subject property since c. 1967, because it is in the midst of a group of complementary commercial uses which exist around the subject property, because it is modest in scale, and because it does not propose vehicle repair or vehicle storage and the attendant visual disruption caused by these activities, this planner's belief is that it will not upset the balance of land use, or restrict the availability of land for other trades and commercial uses....

CONCLUSION

In summary, this planner finds that the approval of the subject application would be in conformance with the general criteria for approval of a Special Exception found in [Section] 27-317(a) with the grant of the requested Alternative Compliance, and with the redirection of the traffic through the car wash to provide for a queuing area, and with the grant of the requested variances is in conformance with the specific criteria for approval of a gas station found in [Section] 27-358 of the Zoning Ordinance.

Additionally, it is this planner's opinion that because of minor scope of the proposed car wash addition and the longstanding use of the subject site as a gas station, that the approval of this particular application would not entail any greater adverse impact on the public health, safety and welfare than those inherently associated with gas stations and car washes, irrespective of their location in the C-S-C Zone.

(Exhibit 32, pp. 4-5,16, and 21)

(18) Mr. Ferguson also testified as to the Application's conformance with the Sector Plan:

Well the recommendation of the Master Plan is for mixed use land uses and what they've said is when mass transit whether it's rail or bus rapid transit arrives on Branch Avenue there will be a stop here and so that's what gives an opportunity for reprogramming ... all of the land uses in the area. The Central Branch Avenue Corridor Revitalization Sector Plan unusually did not include a Sectional Map Amendment And so the existing zoning was left in place. Given that this is a relatively small addition to an existing use it meets the threshold for a major addition because it's more than 15 percent of the area of what is a small store, but it's only 700 square feet. So it's not going to change the character of the area, it's not going to change the balance of land uses and will not ... impair the [Master Plan's] land uses vision any more than the existing use does.

(T. 81)

Existing Gas Station and Food or Beverage Store

(19) The Gas Station became a permitted use in November 1966 upon the District Council's approval of SE-1452. In 1990 the Planning Board approved the revision to the site, ROSE SE-1452, which permitted the razing and reconstruction of the Gas Station pumps to replace with self-service pumps and the addition of the Food or Beverage Store. (Exhibit 19 (a), pp. 41, 66-69)

(20) The Food or Beverage Store has successfully operated on site for more than two decades, and Applicant testified there is a need for it, as noted below. The building is approximately 1,900 square feet and easily accessed by the traveling public or pedestrians along Allentown Road. It operates in conjunction with the Gas Station and has not unduly restricted the availability of land or the balance of uses in that area.

(21) The Gas Station has approximately 157.78' of frontage on, and direct vehicular access to, Allentown Road. Allentown Road has a right-of-way width in excess of 70 feet. (Exhibits 19(a), p. 9) The Prince George' Community College Skill Trade Center is the closest lot on which a school, outdoor playground, library or hospital is located, and "[i]t is 500 feet [away] as the crow flies." (T. 79) There will be no display or rental of any vehicles on site, nor will there be storage or junking of wrecked motor vehicles. (Exhibit 32) Both of the access driveways do not satisfy the provisions of Section 27-358 (a)(5) and variances have been requested as noted below. The access driveways shall be defined by curbing and a 5' wide sidewalk exists along the frontage on Allentown Road. (Exhibit 19(a), p. 10) Applicant does not offer repair services. The Gas Station was constructed over 50 years ago, therefore, Applicant did not need to submit architectural elements. It did provide photos of the site, as noted above. The Special Exception Site Plan shows the topography of the site and abutting lots. (Exhibit 27(e)) Applicant noted there is a dumpster on site, but must provide its location and type of enclosure. There will be no exterior vending machines or vending area. Applicant will comply with the provisions of the Zoning Ordinance in the event of abandonment of the Gas Station.

(22) Applicant testified that there is still a need for the Gas Station and the Food or Beverage Store at the location:

Ms. McNeil: [J]ust generically, how is the gas station doing? Do people seem to need it?

Mr. Nikolaev: Yeah, of course people need it.... The business did go down slightly because of the Royal Farms that opened, because you know it's large, it has food as well and we do not have food. So a lot of the customers are going for that as well. But otherwise, everything is fine.... I believe the carwash would definitely benefit not only the existing clientele that we have, but also the neighborhood....

Ms. McNeil: And how are things with the food or beverage store? Do people use it?...

Mr. Nikolaev: Of course.... [I]t's our biggest sales in there are tobacco... which are cigarettes and cigars and non-alcoholic drinks such as soda, juices... prepackaged foods....

Ms. McNeil: How often do you have to get gas?

Mr. Nikolaev: ... One trailer [delivery of gas] holds 9,000 gallons.... [R]ight now we sell about 4,000 today. So every two days or so we would get a delivery of gas. [B]efore it used to be every three days ... when the prices were [higher]....

(T. 46-47)

(23) Neither use will unduly restrict the availability of land nor impact the balance of land use in the area for other trades or commercial uses since: both have operated on site, successfully, for many years; many other commercial uses continue to thrive in the area.

Variance

(24) Applicant accepted all of the conditions recommended by the Technical Staff, with the exception of 1(g) and 1(h) concerning the driveway widths and setback. (T. 40) The driveway closest to Parcel B (Perge Carpet & Flooring) is 27.3-foot-wide and the one closest to Lot 1(PEPCO) is 26.5'-feet-wide when measure perpendicular to their curbs in the public right-of-way. Moreover, at least 6.1 feet of the driveway closest to Lot 1 (PEPCO) lies within the access easement on Lot 1. (Exhibit 32, p. 19) Section 27-358 (a)(5) requires Applicant to reconstruct the access driveways to either be 30 feet in width or one-way, to be at least 12 feet from the adjoining side lot lines, and to be defined with curbing. Instead, Applicant seeks variances from the width provisions for both driveways, and the setback requirement from Lot 1 for the driveway partially within the easement area.

Alternative Compliance

(25) As new construction is proposed, the Application is subject to several provisions of the Landscape Manual. Applicant requested alternative compliance from Section 4.7 of the Landscape Manual along its northern and southern property lines. The Planning Director recommended approval, as noted below.

Technical Staff/Agency Comment

(26) The Planning Director recommended approval of the request for alternative compliance to the Landscape Manual for the northern and southern property lines adjacent to Lot 1, Parcel 91 and Parcel B. (Exhibit 19(a), pp. 40-44) The following analysis was provided in support thereof:

The applicant is requesting alternative compliance from Section 4.7 of the 2010 Landscape Manual. A Section 4.7 Type B bufferyard, including a 30-foot building setback and a 20-foot-wide landscape yard is required along both the northern and southern property lines, adjacent to Parcel 91, Parcel B, and Lot 1, more specifically defined as a private club, a retail sales and consumer service establishment, and a public utilities structure.

Along both the northern and southern property lines (Bufferyards 1, 2, and 3), the full building setback and/or landscape yard are not being provided, as the existing improvements do not allow for the full landscape buffer to be implemented on the southern property line. The proposed car wash encroachment into the southern bufferyard, adjacent to the public utilities structure, does not meet the building setback, preventing the full bufferyard from being provided. Existing utilities along the northern side prevent the required building setback and landscape yard from being implemented along the entirety of the northern property line. The site, which has existed in its current configuration since the 1990s, cannot accommodate the strict requirements of the Landscape Manual.

Bufferyard 1 is adjacent to a private club, where the required building setback is 30 feet and the required width of the landscape yard is 20 feet. The proposed width of the landscape yard is 5 to 20 feet and does not meet the 20-foot width requirement through the entire bufferyard length. The applicant proposes to provide 4 shade trees and 14 evergreen trees, providing a total of 110 plant units, thus meeting the plant unit requirement of 91 plant units. The application meets the building setback.

Bufferyard 2 is adjacent to a 20,791-square-foot retail sales and consumer service establishment, where the required building setback width is 30 feet and the required landscape yard width is 20 feet. The proposed width of the landscape yard is 5 to 6 feet and does not meet the 20-foot width requirement along the entire bufferyard length. The applicant proposes to provide 3 shade trees and 12 shrubs, thus not meeting the plant unit requirement of 119 plant units. The applicant meets the building setback. Staff recommends the addition of a six-foot-high, sight-tight fence and six up-right, pyramidal Eastern Red cedars (*Juniperus virginiana*), or equivalent.

Bufferyard 3 is adjacent to a public utilities structure, where the required building setback width is 30 feet and the required landscape yard width is 20 feet. The proposed width of the landscape yard is 2.5 to 20 feet and does not meet the 20-foot width requirement throughout the entire bufferyard length. The applicant proposes to provide 9 shade trees (5 of which are existing) and 15 evergreen trees, providing 165 plant units, thus meeting the plant unit requirement of 157 plant units. The applicant does not meet the minimum building setback where the car wash is proposed to be 17.8 feet from the property line.

Therefore, the Alternative Compliance Committee finds the applicant's proposed alternative compliance measures to be equally effective as normal compliance with Section 4.7 of the Landscape Manual, given that the plant material quantities are being met on a site developed in the late 1960s....

(Exhibit 19(a), pp. 43-44)

(27) The Technical Staff recommended approval with certain conditions. (Exhibit 19 (a), pp. 18-19) It provided the following analysis in support of its recommendation:

[T]he redevelopment of this site will conform to the regulations of the Zoning Ordinance. With the recommended conditions, the proposal will be in conformance with all applicable requirements and regulations of the subtitle....

The 2013 *Approved Central Branch Avenue Corridor Revitalization Sector Plan* (Central Branch Avenue Corridor Sector Plan) recommends residential mixed-use (Map 26, page 80) land uses on the subject property, with residential, as the dominant use.... Although the proposed use is broadly inconsistent with the sector plan ... this application will not substantially impair the integrity of the Central Branch Avenue Corridor Sector Plan ... [since] the recommended land use cannot be achieved with the current C-S-C zoning, and the proposed use is permitted by special exception. Thus, it can be

concluded that the proposed use will not substantially impair the integrity of any validly approved master plan or functional master plan....

A gas station with a food [and] beverage store has been in continuous operation on this property since 1966. The proposal is designed to provide for the safe internal flow of pedestrians and vehicles on-site and for the safe ingress and egress of vehicles. None of the responses from any referring agencies received by staff indicate that the proposed car wash, along with the continuation of the gas station and food [and] beverage store uses, subject to specific conditions, will adversely affect the health, safety, or welfare of residents or workers in the area....

The proposed addition of the car wash use to the existing gas station with a food [and] beverage store site will not result in a significant change to the character of the neighborhood. Adjacent properties are commercial in nature. In addition, the Transportation Planning Section has indicated that the current proposal will have minimal impact on the existing transportation network. Therefore, the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood....

(Exhibit 19 (a), pp. 6-7)

(28) The Special Projects Section of MNCPPC's Countywide Planning Division advised that the request would not adversely impact applicable public facilities in the area:

The proposed development is within the service area of Police District V, Clinton. There is 267,660 square feet of space in all the facilities used by the ... Police Department and the July 1, 2016 (U.S. Census Bureau) county population estimate is 908,049. Using the 141 square feet per 1,000 residents, it calculates to 128,034 square feet of space for police. The current amount of space 267,660 square feet is within the guidelines...

The Special Projects Section has reviewed this special exception plan for adequacy of fire and rescue services.... The response time standard established by Section 24-122.01(e) [of the Subdivision Regulations] is a maximum of seven (7) minutes travel time from the first due station....

The Deputy Fire Chief ... stated in writing that as of 9/6/2017 the project is within a 7-minute travel time from the first due station....

The 2008 *Water and Sewer Plan* places this property in Water and Sewer Category 3, Community System for Development. This is sufficient evidence that public water and sewerage are available to serve the project.

(Exhibit 19(a), pp. 57-58)

(29) MNCPPC's Transportation Planning Section noted that any vehicular trips generated by the Car Wash would overwhelmingly result from pass-by traffic, and concluded as follows:

The proposed use will have minimal [traffic] impact.... The existing access exiting and entering the site will remain and this is acceptable. The proposed use will have a separate entry and exit for the single car use which is acceptable. Access and circulation is acceptable.... The Transportation Planning Section finds that the proposal for a single car drive-thru carwash as an additional use to an existing Sunoco gas station and convenience store would meet the requirements of Subtitle 27 for the approval of a Special Exception from the standpoint of vehicular circulation and transportation.

(Exhibit 19 (a), p.37)

(30) MNCPPC's Historic Preservation Section noted that "[t]he subject property does not contain and is not adjacent to any Prince George's County historic sites or resources ... [and] will not impact any historic sites, historic resources or known archeological sites." (Exhibit 19(a), p. 56)

(31) The Health Department stated that Applicant must satisfy the construction activity dust control requirements as specified in the 2011 Maryland Standards and Specification for Soil Erosion and Sediment Control. (Exhibit 19(a), p. 64) It also noted that noise should not adversely impact activities on the adjacent properties during the demolition/construction phase.

(32) The Department of Permitting, Inspections and Enforcement ("DPIE") noted that "[t]he existing entrance on the south side of the property is encroaching on the offsite parcel owned by PEPCO." (Exhibit 19(a), p. 62) It advised that Applicant relocate the entrance or provide proof of a legally recorded easement that permits this encroachment. DPIE also advised Applicant that a pollution prevention plan would be required prior to the issuance of a permit for the car wash. (Exhibit 19(a), pp. 62-63) Applicant provided proof of its easement to access its property from the PEPCO property. (Exhibit 14)

DPIE had additional comment related to stormwater management:

- The proposed special exception shall be revised to meet the intent of the approved concept plan.
- A pollution prevention plan is required prior to permit issuance.
- The proposed storm drain system is not acceptable. Waste water discharge from the proposed car wash shall not be conveyed into the existing storm drain system.

- The Applicant shall connect the proposed car wash to the existing sewer system.... Coordination with the Washington Suburban Sanitary Commission (“WSSC”) is required.

(Exhibit 19(a) p. 63)

APPLICABLE LAW

Variance

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

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

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

(2) “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.

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

Special Exception

(4) There are no specific special exception requirements for the Car Wash use. However, all three requested uses in the Application must satisfy the provisions of Section 27-317 of the Prince George’s County Zoning Ordinance (“Zoning Ordinance”).

(5) 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.

(6) The Food or Beverage Store must satisfy the following provisions found in Section 27-355 of the Zoning Ordinance:

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

(7) Finally, the Gas Station must satisfy the following provisions found in Section 27-358 of the Zoning Ordinance:

- (a) A gas station may be permitted, subject to the following:

- (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
 - (2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;
 - (3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;
 - (4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;
 - (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Permitting, Inspections, and Enforcement, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot;
 - (6) Access driveways shall be defined by curbing;
 - (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic;
 - (8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;
 - (9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.
 - (10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.
- (b) In addition to what is required by Section 27-296(c), the site plan shall show the following:
- (1) The topography of the subject lot and abutting lots (for a depth of at least fifty (50) feet);
 - (2) The location and type of trash enclosures; and
 - (3) The location of exterior vending machines or vending area.
- (c) Upon the abandonment of a gas station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. For the purpose of this Subsection, the term "abandonment" shall mean nonoperation as a gas station for a period of fourteen (14) months after the retail services cease.
- (d) When approving a Special Exception for a gas station, the District Council shall find that the proposed use:
- (1) Is necessary to the public in the surrounding area; and

- (2) Will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

(8) The Application must also meet the general and specific purposes of the commercial zone in which the property is located. The general purposes for all commercial zones are set forth in Section 27-446(a) of the Zoning Ordinance, which provides as follows:

- (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.

(9) The specific purposes of the C-S-C Zone, found in Section 27-454(a)(1) of the Zoning Ordinance, are as follows:

- (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

(10) 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))

(11) Webster’s New World Dictionary (2nd College Edition) defines “necessary” as “essential” and “indispensable”. However, Maryland caselaw has provided a different meaning in a few decisions. For example, in 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.” This has been the standard used by the Zoning Hearing Examiner in recent decisions involving Gas Stations. Moreover, it was the standard applied by the Court of Special Appeals in Mohammed Anvari v. County Council,

an unpublished opinion issued in 2010 concerning an appeal of the District Council's approval of a Special Exception for Gas Station. (Exhibit 45) Accordingly, I have applied the less onerous definition of "necessary" in my review of the instant request.

Special Exceptions

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

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

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

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. All three uses satisfy 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 uses serve the needs of all County residents that rely on the automobile as a means of transportation. Customers will also be able to purchase gasoline and food items, if desired, and clean their vehicle.

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

The 2013 Central Branch Avenue Corridor Revitalization Sector Plan recommends residential mixed use for the site. While the request will not implement this Plan, it is telling that the District Council retained the C-S-C zoning of the subject property and did not address the Plan's Land Use Goals. Moreover, implementation of the Master Plan's goal of developing an Arts District hinges upon the provision of a bus rapid transit stop in the area – which has not yet occurred.

The 2014 General Plan placed the site within the Established Communities – an area that encourages context-sensitive infill. Since the site lies within a commercial cluster of uses, and the requested Car Wash is a relatively minor addition, the Application would constitute context-sensitive infill.

No other Functional Master Plan is impacted by the proposed addition of a Car Wash.

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

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 the existing Gas Station and Food or Beverage Store are already being served by public facilities necessary for its operation. The addition of a Car Wash will not detract from said facilities since a large percentage of its customers would have already been on-site using one of the other two uses.

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

The Applicant proposes to add a relatively small Car Wash to a site with two existing uses in a manner consistent with the various provisions of the Zoning Ordinance (once the variances for existing driveways are addressed). There will be new landscaping and fencing and the Car Wash will be designed to complement the existing Food or Beverage Store. This purpose is, therefore, met.

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

To ensure the social and economic stability of all parts of the County

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

To prevent the overcrowding of land

The addition of a 768-square-foot Car Wash to an improved site with two other uses operating at the site for over twenty years, constructed in accordance with all applicable laws, helps to ensure the prevention of overcrowding of land at this location.

To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions to the existing Gas Station and Food or Beverage Store.

Staff has noted that the addition of this relatively small Car Wash will not add to the congestion on Allentown Road since a significant portion of the customers will be pass-by traffic.

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

(2) The Application also is in harmony with the purposes of the C-S-C Zone in particular, and the purposes of the commercial zones, in general, since all three uses (existing and the proposed Car Wash) will be a convenient commercial use to the traveling public; all three implement the applicable general purposes of the Zoning Ordinance; all three uses within this commercial enclave along Allentown Road will supply the needs of those in the area for such commercial uses; and the three uses and the additional fencing and landscaping will protect adjacent properties. (Sections 27-446 and 454)

(3) The Planning Director has recommended approval of the Applicant's request for alternative compliance to the requirements of the Landscape Manual. It is recommended that the variances to Section 27-358(a)(5) be granted. Therefore, the uses are in conformance to the applicable provisions of the Zoning Ordinance. (Section 27-317(a)(2))

(4) The uses conform to the General Plan's vision of commercial use context-sensitive infill for the area surrounding the subject property. They do not substantially impair the intent of the Sector Plan since the District Council has not approved any zoning changes which would be required to implement the Master Plan's vision for this area. Moreover, the uses do not impact any Functional Master Plan. (Section 27-317(a)(3))

(5) The site has been designed in a manner that provides for the safe internal flow of traffic, as well as pedestrian safety. It is designed in an attractive manner with adequate landscaping. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area. (Section 27-317(a)(4))

(6) The Application, in essence, requests the redevelopment of an existing use. The additional Car Wash will provide a service to the community in an aesthetically pleasing manner. Therefore, the use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(7) The proposal is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance, as discussed *supra*. (Section 27-317(a)(6))

(8) There are no regulated environmental features on the subject property that would require preservation or restoration. (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) Applicant has provided sufficient evidence of a need for the Food or Beverage Store, if need is defined as convenient and conducive to the public in the area, since the use has operated successfully at the site for over twenty years. (Section 27-355(a)(1)). Applicant has shown that the size and access to the Store is oriented toward meeting the needs of the neighborhood, for the same reason. (Section 27-355(a)(2)) Again, the relatively small store has operated successfully on the site, and has not restricted other allowed commercial uses from developing in the area. (Section 27-355(a)(3))

(11) The Gas Station has approximately 157.78' of frontage on, and direct vehicular access to, Allentown Road, a street with a right-of-way width in excess of 70 feet. (Section 27-358(a)(1)) The subject property is nearly 500 feet from a lot on which a school, outdoor playground, library or hospital is located. (Section 27-358(a)(2)) There will be no display or rental of cargo trailers, trucks or similar uses, nor will the storage or junking of vehicles be permitted. (Sections 27-358(a)(3) and (4)) Access driveways will be defined by curbs and there is a sidewalk at least 5-feet-wide between the building line and the curb in areas serving pedestrian traffic. (Sections 27-358(a)(6) and (7)) The Site Plan shows the gasoline pumps are more than 30 feet from the street line. (Section 27-358(a)(8)). There will not be any vehicle repair services on site. (Section 27-358(a)(9)). The Gas Station is an existing use; therefore, no architectural renderings were needed. Applicant did submit photos of the site. (Section 27-358(a)(10)) The Site Plan provides the topography of the site and abutting lots. (Section 27-358(b)(1)) Applicant has not shown the location/type of trash enclosure, but will not be providing exterior vending machines or vending area. (Sections 27-358(b)(2) and (3)) Applicant will comply with all provisions concerning the abandonment of the Gas Station should that occasion arise. (Section 27-358(c)). Applicant has shown the existence of a need for the Gas Station, if need is defined as convenient and conducive to the public in the area, since it has operated successfully on site since its inception more than 50 years ago. (Section 27-358(d)(1)) The successful operation of this Gas Station at the site has not unduly restricted the availability of land for other allowed commercial uses since the Gas Station is surrounded by thriving commercial uses. (Section 27-358(d)(2))

(12) Applicant has requested a variance from the provisions of Section 27-358(a)(5) concerning the width of both access driveways and the setback for the driveway adjacent to the PEPCO property.

(13) Each variance can be granted since: the lot is unusually shaped; and a portion of one of the access driveways, in use for decades, is legally on the adjoining property owned by PEPCO – an extraordinary situation or condition. (Section 27-230(a)(1)) If the Zoning Ordinance were strictly applied, it would result in unusual, practical difficulties for the applicant since Applicant would have to demolish the existing entrances (and perhaps more of the site); increase the limit of disturbance for stormwater management purposes; and remove the driveway currently paved over the easement and reconstruct it on Applicant's land which would change the interior traffic circulation and could lead to an adverse impact on such a small site. (Section 27-230(a)(2)) Granting the variances will not substantially impair the intent of the General Plan or Sector Plan since: the former recommends that context-sensitive infill development and the addition of a small Car

Wash satisfies that goal; and, the latter may have addressed a future goal of residential mixed use but retained the C-S-C zoning of the site - adding a commercial use to the site would not therefore, substantially impair the Sector Plan. (Section 27-230(a)(3))

DISPOSITION

Special Exception/VSE-4772 and AC No. 17018 are Approved, subject to the following conditions:

1. Prior to certification of the Special Exception Site Plan and Landscape Plan and issuance of any permits, the Special Exception Site and Landscape Plan shall be revised, as follows:
 - a. Correct General Note 3 to indicate the C-S-C Zone.
 - b. Correct General Note 9 and the roadway dedication labeled on the site plan to indicate Record Plat WWW 63–36 as the recording reference, and remove from the plans the property lines superseded by the current plat.
 - c. Correct General Note 23 on the plans to indicate that the property is in the Military Installation Overlay Zone, and provide the criteria.
 - d. Add the date of construction of the existing building to the plans.
 - e. The height of the existing building shall be labeled on the plans in order to demonstrate compliance with the setback requirements provided in Section 27-462(b) of the Prince George’s County Zoning Ordinance.
 - f. Provide the area, height, and setback for all signage.
 - g. Label the existing sidewalk along MD 337 (Allentown Road) to demonstrate a minimum width of five feet, or indicate replacement with a proposed sidewalk of that width, in accordance with the County Road Ordinance, the Prince George’s County Department of Public Works and Transportation specifications and standards, and the Americans with Disabilities Act.
 - h. Show the curbing along both sides of the access driveways.
 - i. Dimension the pump locations from the right-of-way.
 - j. Show the location and type of trash enclosure.
 - k. Revise the usage of the adjacent properties from “masonic temple” to private club, from “commercial” to retail sales and consumer service

establishment less than 60,000 square feet, and from “utilities” to public utility structure.

- l. Dimension and label the required and provided building setbacks and the landscape yard length and width for each bufferyard.
 - m. Revise the north arrow on the plan to show true north.
 - n. Revise Bufferyard 2 to include the addition of a six-foot-high, sight-tight fence and six up-right, pyramidal Eastern Red cedars (*Juniperus virginiana*), or equivalent.
 - o. Label the dimensions from the building to the property line and label the dimensions of the Car Wash and the Food or Beverage Store.
 - p. Provide a note indicating intent to conform to the construction activity dust control requirements as specified in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.
 - q. Provide a note indicating intent to conform to the construction activity noise control requirements as specified in Subtitle 19 of the Prince George’s County Code.
 - r. Correct the Section 4.2 Landscape Schedule and/or landscape plan for consistency as to the proposed plant units. The Section 4.9 Landscape Schedule shall be revised, in accordance with revisions made to the landscaping, to reflect the total number of plant units for the site.
 - s. Add a Note(s) demonstrating the Gas Station’s conformance with Sections 27-358 (a) (2), (3), (4), (9), and 27-358(c). Applicant shall also add a Note detailing the variances granted to the requirements in Section 27-358 (a)(5).
 - t. Outline the subject property in red and label the Site Plan as the “Special Exception Site and Landscape Plan”, and the project number as “SE/VSE - 4772”.
2. Prior to certification of the Special Exception Site and Landscape Plan and issuance of any permits, Applicant shall submit the following item to the Office of the Zoning Hearing Examiner for review and inclusion in the record:
- a.) A Pollution Control Plan approved by the Prince George’s County Health Department and/or DPIE, as applicable.

[NOTE: The Special Exception Site Plan and Landscape Plan is Exhibit 27(e) and the architectural elevations are Exhibit 41.]