

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed NCGS-21, Grimes’ Market–Aquasco requesting the revision of a site plan for a certified nonconforming gas station to show the actual location of an existing pump island, and a variance from Section 27-358(a)(8) to waive five feet of the required 25-foot setback from the street line in order to validate the location of an existing gasoline pump in accordance with Subtitle 27 of the Prince George’s County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on June 20, 2013, the Prince George’s County Planning Board finds:

- A. **Location and Field Inspection:** The site is located along the west side of Aquasco Road (MD 381) at its intersection with St. Phillips Road. The property is known as Parcel 51 on Tax Map 180, Grid D4, and consists of approximately 1.01 acres in the C-S-C Zone. The property is improved with a 4,320-square-foot food and beverage store (IGA) and a non-conforming auto filling station. The southeast portion of the building also houses the Aquasco United States Postal Service (USPS).

Access to the property is via Aquasco Road (MD 381). The site contains a macadam parking lot, one multi-product gasoline pump dispenser with two fueling positions, two underground tanks, a kerosene pump, one freestanding gas price sign, a shed, and a dumpster. Light poles are provided on the north, south and east side of the parking compound.

The food and beverage store and post office are permitted uses in the C-S-C Zone. A gas station is permitted in the C-S-C Zone as a special exception use.

- B. **Development Data Summary:**

	<b>EXISTING</b>	<b>APPROVED</b>
Zone	C-S-C	C-S-C
Acreage	1.01 acres	1.01 acres
Use	Food or Beverage Store, Gas Station, Post Office	Food or Beverage Store, Gas Station, Post Office

- C. **History:**

**1955**–Per information derived from The Maryland Department of Assessments and Taxation, the building was initially constructed sometime in 1955.

**December 30, 1963**–Use & Occupancy Permit No. 7337-U, (aka Permit Application No. 10729-U) was issued for the property by the County’s Department of Licenses and Permits for a general merchandise store.

**April 8, 1965**–Zoning authority was first adopted for this area placing the subject property in the R-R Zone. The property was rezoned from R-R to C-2 between 1965 and 1977 and rezoned again from C-2 to C-S-C in 1977.

**July 16, 1998**–Nonconforming Use Application, NCU-2473-98-U was approved by the Planning Board for a certified nonconforming auto filling station in the C-S-C Zone, (PGCPB Resolution No. 98-222).

**October 9, 1998**–Use & Occupancy Permit No. 2473-98-U was approved by the Permit Review Section for a retail food and beverage store and a certified nonconforming auto filling station.

**May 4, 2005**–Use & Occupancy Permit No. 13349-2005-U was approved by the Permit Review Section for a retail food and beverage store and a certified nonconforming self-serve auto filling station. The permit was ultimately issued by the Department of Environmental Resources on May 12, 2005.

**February 26, 2013**–Use & Occupancy Permit No. 5307-2013-U was placed on hold by the Permit Review Section because the site plan that was submitted for the permit demonstrated a gas pump island that was in a slightly different location and size than what was shown on the site plan that was previously approved by the Planning Board. The permit was placed on hold pending the outcome of the subject application.

- D. **Master Plan Recommendation:** The September 1993 and May 1994 *Approved Master Plan and Sectional Map Amendment for Subregion VI Study Areas (79, 82A, 82B, 86A, 86B, 87A, 87B)* recommends a service-commercial land use for the subject property.
- E. **Request:** The applicant requests a revision of a site plan for a certified nonconforming gas station to show the actual location of an existing pump island. The existing pump island has been in place since November of 1998. However, when the applicant recently filed for a new Use and Occupancy Permit (5307-2013-U) in February, 2013, the Permit Review Section discovered that the pump island that was shown on the current site plan was in a slightly different location than what was shown on the site plan approved by the Planning Board on July 16, 1998, in conjunction with Nonconforming Use Application, NCU-2473-98-U. When the underground tanks were replaced along with the pump island and the single-gas pump in November of 1998, the pump island was slightly adjusted for security purposes in order to provide a better view from the cash register located inside the food and beverage store. The applicant is requesting the Planning Board to validate the location of the existing pump island.

Aquasco Road (MD 381) was shown as having a 40-foot right-of-way on the prior approved plan. During the review of this application, the Transportation Planning Section concluded that the

right-of-way width of MD 381 is now 80 feet wide. The westerly limits of the expanded right of-way now extend into the property approximately 20 feet. The existing pump island that was constructed in 1998 can no longer meet the required 25-foot setback from the street along MD 381. As a result, the applicant is requesting a variance from Section 27-358(a)(8) of the Zoning Ordinance in order to waive five feet of the required 25-foot setback from the street line to validate the existing location of the gasoline pump.

Since Planning Board approval is required for this minor change to a certified nonconforming use, the applicant is also taking this opportunity to show the existing trash enclosure which was not shown on the prior plan, and to relocate the van accessible handicapped space to a more suitable location directly in front of the building. The previous location of the handicapped space was along the north side of the building and the existing kerosene pump blocked direct access to the sidewalk along the front of the building. The new location is closer to the front door of the building and will provide unimpeded access for the physically handicapped.

**F. Surrounding Uses:**

**North**—Undeveloped lot in the O-S Zone

**South**—St. Phillips Road right-of-way

**East**—Aquasco Road (MD 381) right-of-way

**West**—Undeveloped lot in the O-S Zone

**G. Specific Requirements:** Section 27-242(b)(3)(A) of the Zoning Ordinance provides the modifications to a certified nonconforming gas station that may be permitted by the Planning Board without a special exception:

**Section 27-242. Alteration, extension, or enlargement**

**(3) Gas stations.**

**(A) The following modifications of a certified nonconforming gas station may be permitted by the Planning Board without a special exception (Section 27-384):**

**(i) The enlargement or relocation of pump islands;**

**(ii) The addition of one (1) pump island;**

**(iii) The addition, relocation, or modification of a fence, kiosk, island shelter, island canopy, storage area, trash enclosure, vending area, or lavatory facility;**

- (iv) **The addition, relocation, or modification of an accessory building used solely for the storage of automotive replacement parts or accessories. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to that of 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 screening shall be approved as part of the modification.**

The enlargement and relocation of the pump island and the addition of the trash enclosure are permitted through Section 27-242(3)(A) of the Zoning Ordinance.

- (B) A site plan shall be submitted showing the modifications.**

The applicant has essentially submitted the same site plan that was approved by the Planning Board on July 16, 1998 for Nonconforming Use Application NCU-2473-98-U. The plan has been slightly revised to demonstrate the existing location of the pump island, the location of the existing dumpster, and the proposed new location of the van accessible parking space for the physically handicapped. Aquasco Road (MD 381) was also shown on the submitted plan as having a 70-foot-wide right-of-way width in accordance with Section 27-462(b), Footnote No. 1, which among other things, states that streets shall be deemed to have a right-of-way width of at least 70 feet unless otherwise shown on a master plan.

- (C) The modifications shall not violate any condition of a previously approved Special Exception for a gas station on the property.**

No prior special exceptions applications have been approved for the property.

- (D) The modification shall be in conformance with Section 27-358(a)(5), (6), (7), (8), and (10), Section 27-358(c), and any provisions of the zone in which the property is located.**

The requirements of Section 27-358(a)(5), (6), (7), (8), and (10), and Section 27-358(c) are as follows:

**Section 27-358(a)**

- (5) Access driveways shall be not less than 30 feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Public Works**

**and Transportation, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than 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 12 feet from the side or rear lot line of any adjoining lot.**

There are no defined access driveways on the property. The entire street frontage of MD 381 can accommodate vehicular access into and out of the property because no curb and gutter exists on the site.

**(6) Access driveways shall be defined by curbing.**

There are no defined access driveways on the property.

**(7) A sidewalk at least five feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic.**

The site is located in a very rural area that generally consists of detached single-family dwellings, farms and agricultural uses that are primarily located on larger acreage parcels. The site was developed prior to any zoning requirements being adopted in this area. The site was certified by the Planning Board as a nonconforming auto filling station in the C-S-C Zone through their approval of NCU-2473-98-U on July 16, 1998 (PGCPB Resolution No. 98-222). The site plan approved by the Planning Board did not meet several of the specific special exception requirements for a gas station provided in Section 27-358(a) of the Zoning Ordinance, as the use predated these requirements.

In this case, the site has no sidewalks, no curb and gutter and serves no pedestrian traffic. The Maryland State Highway Administration (SHA), which has jurisdiction over Aquasco Road (MD 381), has reviewed and approved the subject application. The operating agency has not requested sidewalks, curb and gutter or any other frontage improvements along MD 381.

**(8) Gasoline pumps and other service appliances shall be located at least 25 feet behind the street line.**

The property is a corner lot having street frontage on both Aquasco Road (MD 381) and St. Phillips Road. The current location of the existing gasoline pump does meet the required 25-foot setback from St. Phillips Road. However, during

the review of this application, the Transportation Planning Section determined that the ultimate right-of-way width of MD 381 is now 80 feet. As a result, the westerly limits of the ultimate right-of-way fall approximately 20 feet into the subject property.

The site plan that was previously approved by the Planning Board on July 16, 1998, in conjunction with Nonconforming Use Application, NCU 2473 98-U, showed Aquasco Road (MD 381) as having only a 40-foot-wide right-of-way width. The 80-foot-wide ultimate right-of-way that is now proposed would result in the gasoline pump being setback only 20 feet from the limits of the ultimate right-of-way. As a result, the applicant has requested a variance from Section 27-358(a)(8) of the Zoning Ordinance in order to waive five feet of the required 25-foot setback from the street line in order to validate the existing location of the gasoline pump.

- (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.**

The subject application was submitted for the purposes of validating the existing location of a single-pump island. The applicant proposes no alterations to the architectural elements of the building or increases in gross floor area (GFA). No changes have been made to the building since the time Nonconforming Use Application NCU-2473-98-U was approved by the Planning Board on July 16, 1998. Further, the property abuts public rights-of-way along the southern and eastern property lines, and undeveloped land in the O-S Zone along the northern and western property lines.

**Section 27-358(c)**

**Upon the abandonment of 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 non-operation as a gas station for a period of 14 months after the retail services cease.**

There is no indication in the record of a potential conflict with this requirement.

- (E) At the time the application is filed, a fee shall be paid by the applicant to cover the costs of processing the application. The amount of the fee shall be established by the Planning Board.**

The applicant has paid the required application fee that was established by the Planning Board.

- (F) **The Planning Board's decision on the requested modification shall be sent to all persons of record in the hearing before the Planning Board, and to the District Council. This decision may be appealed to the District Council upon petition by any person of record. The petition shall be filed with the Clerk of the Council within thirty (30) days after the date of the notice of the Planning Board's decision. The District Council may vote to review the Planning Board's decision on its own motion within thirty (30) days after the date of the notice. The Clerk of the Council shall notify the Planning Board of any appeal of review decision. Within seven (7) days after receiving this notice, the Planning Board shall transmit to the District Council all written evidence and materials submitted for consideration by the Planning Board, a transcript of the public hearing on the revised plan, and any additional information or explanatory material deemed appropriate. The District Council shall schedule a public hearing on the appeal or review. The Council shall give at least thirty (30) calendar days notice of the hearing to all persons of record and the Planning Board, all of whom shall be entitled to appear at the hearing. Testimony at the hearing shall be limited to the facts and information contained within the record made at the hearing before the Planning Board. Within sixty (60) days after the close of the Council's hearing, the Council shall affirm, reverse, or modify the decision of the Planning Board, or return the modification request to the Planning Board to take further testimony or reconsider its decision. Where the Council approves a modification, it shall make the same findings which are required to be made by the Planning Board. If the Council fails to act within the specified time, the Planning Board's decision is automatically affirmed. The Council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to all persons of record and the Planning Board.**

The above procedures will be followed.

- H. **Parking and Loading:** The entire building consists of 4,320 square feet of gross floor area. A food and beverage store requires one parking space for every 150 square feet of gross floor area. A gas station requires three parking spaces per service bay and one space for each employee. In this case, the gas station has no service bays and the parking space required for each employee only pertains when a kiosk is located on the property. There is no kiosk on the site and customers pay for their gas inside the food and beverage store. The entire gross floor area (GFA) of the food and beverage store has already been accounted for in determining the required number of parking spaces. However, the applicant's site plan does include the required parking space for a gas station employee. A condition has been recommended to have the parking schedule revised prior to final disposition of the case to remove the required parking space for a gas station employee.

The post office occupies a very small area in the southeast corner of the building and mainly consists of a small number of post office boxes. Separate parking calculations are not required for the post office. The entire gross floor area of the building has already been accounted for the purposes of calculating the required number of parking spaces for the food and beverage store. This includes the area of the post office and the area where a customer would purchase gasoline.

The site plan submitted by the applicant demonstrates that a total of 29 parking spaces are required for the food and beverage store and one additional space is required for the gas station employee. Therefore, the site plan shows that 30 parking spaces are required and 34 spaces are provided.

The 34 parking spaces that are shown on the site plan consist of 32 standard spaces that are sized in accordance with Section 27-584 of the Zoning Ordinance, (pre-1970 standards, sized at ten-foot by 20-foot, or 200 square feet each), one 13-foot by 20-foot standard parking space for the physically handicapped, and one 16-foot by 20-foot van accessible parking space for the physically handicapped.

One loading space is required for every 50 feet of building width (measured at the primary entrance of the building). The building is 48 feet in width. Therefore, a loading space is not required. However, one 15-foot by 25-foot loading space is provided on the south side of the building adjacent to the loading dock.

- I. **Zone Standards:** The application is in substantial conformance with the requirements of the C-S-C Zone. The applicant has requested a variance from Section 27-358(a)(8) of the Zoning Ordinance in order to waive five feet of the required 25-foot setback from the street line to validate the existing location of a gasoline pump.
- J. **Department of Public Works and Transportation (DPW&T):** In a referral memorandum dated May 9, 2013, DPW&T stated that Aquasco Road (MD 381) is a State-maintained roadway. Therefore, coordination with the Maryland State Highway Administration (SHA) is required.

Additional comments were also provided in DPW&T's memorandum that do not apply to the subject application, such as, the need for a site development permit that includes ultimate right-of-way frontage improvements, a dedication and pollution prevention plan, and an approved stormwater management concept plan. Typically, these requirements only apply to building permits that propose an increase in gross floor area or other proposed development that may require the approval of a grading permit. This application is to validate the existing location of one pump island for a certified nonconforming use. The building and uses were in existence prior to zoning authority being adopted in this area. No new construction is being proposed at this time. Therefore, the approval of a building permit is not required. The applicant will be pursuing a new use and occupancy permit only. DPW&T further stated in their May 9, 2013 memorandum that they have no objection to the proposed revision.



- K. **Maryland State Highway Administration (SHA):** In a referral dated April 15, 2013, the Maryland State Highway Administration stated that the applicant's plans have been reviewed and approved.
- L. **Transportation:** In a referral dated April 23, 2013, the Transportation Planning Section stated that the plan needs to reflect the ultimate right-of-way width of 40 feet from centerline along Aquasco Road (MD 381). The Transportation Planning Section found no transportation-related issues associated with the application.

A condition has been recommended to have the site plan revised prior to final disposition of the case to reflect the ultimate right-of-way width of 40 feet from centerline along Aquasco Road (MD 381).

- M. **Subdivision:** The property is known as Parcel 51, and is located on Tax Map 180 in Grid D-4. The site is in the C-S-C Zone and is approximately one acre in size. Parcel 51 is an acreage parcel and has never been the subject of a record plat and is a legal parcel. The site is improved with a 4,320-square-foot building for a gas station which is 9.9 percent of the total land area of the site. The applicant is requesting to validate the location of an existing gasoline pump island that was not built in the exact location shown on the site plan that was approved by Planning Board in conjunction with Nonconforming Use Application, NCU-2473-98-U.

Pursuant to Section 24-107(c)(7)(B) of the Subdivision Regulations, the site is exempt from the requirement of filing a preliminary plan of subdivision because the parcel was created by deed prior to January 1, 1982 and the total gross floor area of development does not exceed 5,000 square feet.

The site is within Sustainable Growth Tier 4 (SGT). As a note, after October 1, 2012 the subdivision of land in Sustainable Growth Tier 4 is limited in total to a cumulative number of residential lots permitted under a minor preliminary plan, which is seven lots. The SGT restrictions are not applicable to non-residential uses.

There are no other subdivision issues at this time.

- N. **Permit Review Section:** In a referral dated April 12, 2013, the Permit Review Section asked if a ramp or other means of access is provided into the building for the physically handicapped.

In an e-mail response dated April 15, 2013, the applicant's engineer stated that the concrete slab that is located in the front of the store, and the entrance into the store itself, are both flush with the adjacent grade. Therefore, the building is fully accessible to the physically handicapped. A condition has been recommended to have a general note added to the site plan prior to final disposition of the case which states that adequate access is provided into the building for the physically handicapped.

- O. **Historic Preservation:** In a referral dated April 16, 2013, the Historic Preservation Section found that the subject property is located across the street from Villa de Sales Historic Site (87B-036-13). However, the proposed revision for the purposes of validating the existing location of one pump island will have no effect on identified Historic Sites, Resources, or Districts.
- P. **Urban Design Section:** In a referral dated April 26, 2013, the Urban Design Section stated that the application is exempt from most provisions of the 2010 *Prince George's County Landscape Manual* because it does not involve a change of use, an increase of gross floor area or an increase in impervious area, and will not require any grading or building permits. It is, however, subject to Section 4.4, Screening Requirements, of the *Prince George's County Landscape Manual*. Urban Design staff suggested that both the dumpster and the loading space be screened from the public right-of-way by a six-foot-high, sight-tight enclosure or fence constructed of a non-wood, non-white, low sheen, durable material in accordance with the requirements of Section 4.4 of the *Prince George's County Landscape Manual*.

The loading space is located in the same exact location that was shown on the site plan that was previously approved by the Planning Board on July 16, 1998 in conjunction with Nonconforming Use Application, NCU-2473-98-U. The loading space directly abuts the south side of the building, and is further hidden from the public right-of-way by the raised, interior green island that surrounds the well. As a result, there are no additional screening requirements needed for the loading space.

A condition has been recommended to have the dumpster screened from the public right-of-way in accordance with the requirements of Section 4.4 of the *Prince George's County Landscape Manual* prior to final disposition of the case. The dumpster was not shown on the prior plan that was approved by the Planning Board on July 16, 1998 in conjunction with Nonconforming Use Application, NCU-2473-98-U. However, Section 27-242(b)(3)(A)(iii) of the Zoning Ordinance allows, among other things, the addition, relocation, or modification of a trash enclosure for a certified nonconforming gas station to be approved by the Planning Board without the need for a special exception.

#### **Tree Canopy Coverage Ordinance**

The application for a revision to a nonconforming use will not require a permit that proposes 1,500 square feet or greater disturbance. Therefore, the application is not subject to the requirements of the Tree Canopy Coverage Ordinance (TCC).

- Q. **Variance Request:** Section 27-230 of the Zoning Ordinance provides the required criteria that the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board must find in order to grant a variance.
- (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.**

On July 16, 1998, Nonconforming Use Application, NCU-2473-98-U was approved by the Planning Board for a certified nonconforming auto filling station in the C-S-C Zone, (PGCPB Resolution No. 98-222). In November of 1998, the applicant replaced the underground fuel tanks, pump island and the single-pump dispenser via Permit 9215-1998-CG. Federal and State law required all old underground gasoline storage tanks to be replaced or sealed by December of 1998. For security reasons, a field change was made at that time to slightly adjust the location of the pump island in order to provide a better view of the pump from the cash register inside the food and beverage store. The applicant was not aware that the minor adjustment would result in the need for a new site plan to be approved by the Planning Board.

On May 4, 2005, Use & Occupancy Permit No. 13349-2005-U was approved for the property by the Permit Review Section for a retail food and beverage store and a certified nonconforming self-serve auto filling station. Since the prior approved site plan was submitted for the 2005 use and occupancy permit, the slightly different location of the gas pump island was not noticed at that time. The permit was ultimately issued by the Department of Environmental Resources (DER) on May 12, 2005.

On December 20, 2012, a new deed was recorded for the property in Prince George's County Land Records (Liber 34224, Folio 384). The deed was an inter-family transfer from the applicant's mother to the applicant. As a result of the change in property owners, a new use and occupancy permit was needed. However, before the applicant applied for the new use and occupancy permit, she had the prior approved site plan amended to show the actual location of the pump island. On February 26, 2013, Use & Occupancy Permit No. 5307-2013-U was placed on hold by the Permit Review Section because the site plan that was submitted for the permit demonstrated a gas pump island that was in a slightly different location and size than what was shown on the site plan that was previously approved by the Planning Board. The permit was placed on hold pending the outcome of the subject application.

The prior approved site plan that was approved by the Planning Board showed Aquasco Road (MD 381) as having a 40-foot right-of-way width. During the review of the subject application, the Transportation Planning Section concluded that the right-of-way width of MD 381 is now 80 feet wide. The westerly limits of the expanded right-of-way now extend into the property approximately 20 feet. At the time of its construction in 1998, the existing pump island met the

required 25-foot setback from the street line. However, with the ultimate right-of-way of MD 381 now being increased to 80 feet wide, the existing pump island can no longer meet the required 25-foot setback from the street along MD 381. As a result, the applicant is requesting a variance from Section 27-358(a)(8) of the Zoning Ordinance in order to waive five feet of the required 25-foot setback from the street line to validate the existing location of the gasoline pump.

Right-of-way dedication is not required with nonconforming use applications. Should SHA ever propose to expand Aquasco Road (MD 381) to its ultimate right-of-way width of 80 feet, the operating agency would have to purchase the portion of the property that is located within the ultimate right-of-way from the applicant. The gas sales and other uses on this property predate the adoption of zoning requirements in this area. The pump island has existed in its present location since 1998. The fact that the existing gas pump can no longer meet the 25-foot setback from the street because the ultimate right-of-way width of MD 381 has doubled in size since the prior plan was approved by the Planning Board creates an extraordinary situation or condition for the property owner.

Due to the rural nature of the Aquasco area and the limited traffic flow along this portion of MD 381, it is doubtful that the right-of-way would be expanded any time soon. Page 181 of the September 1993 and May 1994 *Approved Master Plan and Sectional Map Amendment for Subregion VI Study Areas (79, 82A, 82B, 86A, 86B, 87A, 87B)* recommends that Aquasco Road (MD 381) (C-613) be maintained as a two-lane rural collector from Charles County to Baden Westwood Road, with upgrades for turning lanes and improved shoulder paving. The approved Subregion VI master plan further states that this is a later need facility associated with later stages of development in the Baden Westwood and Aquasco areas. The existing gas pump is setback 20 feet from the limits of the new 80-foot-wide ultimate right-of-way. Requiring the applicant to move the pump and pump island back five more feet from the limits of the ultimate right-of-way would result in peculiar and unusual practical difficulties for the applicant due to the expense and impracticality of such a move, resulting in an obvious exceptional or undue hardship upon the owner of the property.

The gas and kerosene sales the applicant provides appears to be a much needed benefit to the community, as the closest gas stations are several miles away from the Aquasco area. The need for the variance is not due to any actions of the applicant, and is needed only due to the increase of the MD 381 right-of-way as shown in the current master plan. The applicant was not aware of the increased right-of-way width until it was identified during the review of this application. As a result, the site plan submitted does not reflect the master plan right-of-way width of 80 feet along MD 381. A condition has been recommended to have the site plan revised to reflect the 80-foot-wide right-of-way width along MD 381 prior to final disposition of the case. With the site plan being amended to reflect the current right-of-way width shown in the master plan, the variance will not substantially impair the intent, purpose, or integrity of the 2002 *Prince George's County General Plan* or the September 1993 and May 1994 *Approved Master Plan and Sectional Map Amendment for Subregion VI Study Areas (79, 82A, 82B, 86A, 86B, 87A, 87B)*.

- R. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning or have been established in accordance with all regulations in effect at the time it began. Second, there must be no break in operation for more than 180 days since the use became nonconforming. Section 27-244 of the Zoning Ordinance sets forth the specific requirements:

**Section 27-244. Certification.**

**(a) In general.**

- (1) A nonconforming use may only continue if a use and occupancy permit identifying the use as nonconforming is issued after the Planning Board (or its authorized representative) or the District Council certifies that the use is nonconforming and not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division).**

**(b) Application for use and occupancy permit.**

- (1) The applicant shall file for a use and occupancy permit in accordance with Division 7 of this Part.**
- (2) Along with the application and accompanying plans, the applicant shall provide the following:**
- (A) Documentary evidence, such as tax records, business records, public utility installation or payment records, and sworn affidavits, showing the commencing date and continuous existence of the nonconforming use;**
- (B) Evidence that the nonconforming use has not ceased to operate for more than one hundred eighty (180) consecutive calendar days between the time the use became nonconforming and the date when the application is submitted, or that conditions of nonoperation for more than one hundred eighty (180) consecutive calendar days were beyond the applicant's and/or owner's control, were for the purpose of correcting Code violations, or were due to the seasonal nature of the use;**

- (C) **Specific data showing:**
- (i) **The exact nature, size, and location of the building, structure, and use;**
  - (ii) **A legal description of the property; and**
  - (iii) **The precise location and limits of the use on the property and within any building it occupies;**
- (D) **A copy of a valid use and occupancy permit issued for the use prior to the date upon which it became a nonconforming use, if the applicant possesses one.**

On July 16, 1998, the gasoline sales were certified as a nonconforming use pursuant to CNU-2473-98-U and PGCPB Resolution No. 98-222. The last approved and issued use and occupancy permit was Permit No. 13349-2005-U, which was approved on May 4, 2005. The last date of documentation showing the continuous operation of gasoline sales that was submitted for this permit was April 18, 2005. Therefore, the applicant must now submit documentation which clearly demonstrates that the sale of gasoline has not ceased operation for more than 180 consecutive calendar days from the time period of April 18, 2005 to the present in accordance with Sections 27-241(c), and 27-244(b)(B) of the Zoning Ordinance.

The applicant has submitted the following documentation;

- **April 19, 2005** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **May 12, 2005** – Use & Occupancy Permit 13349-2005-00 is issued by the Department of Environmental Resources for a Food & Beverage Store and a Certified Nonconforming Auto Filling Station.
- **September 1, 2005** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **February 6, 2006** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.

- **June 22, 2006** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **August 03, 2006** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **December 21, 2006** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **May 2, 2007** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **October 18, 2007** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **March 6, 2008** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **August 11, 2008** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **January 6, 2009** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **June 3, 2009** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **November 20, 2009** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **April 3, 2010** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **September 19, 2010** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **February 3, 2011** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **July 15, 2011** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **December 20, 2011** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.

- **May 21, 2012** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **October 18, 2012** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.
- **February 15, 2013** – Receipt from Service Energy, LLC for the wholesale purchase of gasoline.

A permit history of the property from April 7, 1998 through February 21, 2013, was also submitted which includes prior use and occupancy permits, building/grading permits for the removal and replacement of the underground tanks, electrical permits, and Health Department permits and inspections. The Health Department permits were most likely related to the food and beverage store, which is a permitted use in the C-S-C Zone, however, they do further help demonstrate that the business as a whole has been in continuous operation.

The applicant has provided sufficient evidence that clearly demonstrates that the use of the gas station has been in continuous operation on the property since the time the last use and occupancy permit was approved for the site.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted application, subject to the following conditions:

1. Prior to final disposition of the case, the site plan shall be revised as follows;
  - a. Add a general note stating that "Appropriate access is provided into the building for the physically handicapped."
  - b. Revise the parking schedule to remove the required parking space for the gas station employee.
  - c. Provide screening for the dumpster in accordance with the requirements of Section 4.4 of the 2010 *Prince George's County Landscape Manual*.
  - d. Reflect the ultimate right-of-way width of 40 feet from centerline along Aquasco Road (MD 381).

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.



\* \* \* \* \*

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Shoaff, with Commissioners Washington, Shoaff, Geraldo, Bailey and Hewlett voting in favor of the motion at its regular meeting held on Thursday, June 20, 2013, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 11<sup>th</sup> day of July 2013.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator

PCB:JJ:JF:arj