

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

SPECIAL EXCEPTION

4676

VARIANCE

4676

DECISION

Application:	Gas Station and Variances
Applicant:	Man H. Kim t/a Red Top Gas Station
Opposition:	None
Hearing Date:	February 20, 2014
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4676 is a request to use approximately .749 acres of land, in the C-S-C (Commercial Shopping Center) Zone, for a Gas Station. Variances are also requested for the pump island and the pump canopy. The subject property is located in the southwest quadrant of the intersection of East-West Highway and Red Top Road, also identified as 949 East-West Highway, Takoma Park, Maryland.
- (2) The Technical Staff recommended approval of the instant Application and Variances, Exhibits 10 and 29, with conditions, and the Planning Board did not elect to hear the Application, and in lieu thereof, adopted the recommendations of the Technical Staff. (Exhibit 16)
- (3) No one appeared in opposition and at the conclusion of the evidentiary hearing, the record was left open for the inclusion into the record of several documents. Upon receipt of the documents, the record was closed on February 25, 2014.

FINDINGS OF FACT

Subject Property

- (1) The subject property is located in the southwest quadrant of the intersection of East-West Highway (MD 410) and Red Top Road, and is improved with a 1,944 square-foot Gas Station with three service bays, a 1,000 square-foot Food or Beverage Store, and an 800 square-foot detached Car Wash. Additional structures on the site include three concrete pump islands, five gasoline pump

dispensers, two canopies, underground storage tanks, one freestanding sign, and parking spaces. In addition, the Applicant has numerous coin-operated self-service Car Wash units. Three of the Car Wash units appear to be off the subject property to the southwest, while the others are located along the western property line in an area shown for parking. The site has two access drives along East-West Highway and two along Red Top Road.

Zoning History

(2) September 17, 1952 – The property was rezoned to the Local Commercial, Existing (C-1) Zone (A-1933).

March 7, 1955 – The District Council approved the request for a Gas Station (Automobile Filling Station) (SE-222), for a portion of the site.

July 19, 1976 – The District Council denied a subsequent Special Exception Application (SE-2830) which proposed expansion of the use to the remainder of the site.

February 12, 1990 -- The District Council approved Special Exception 3919 for a Gas Station, Food or Beverage Store, and Car Wash on the subject property.

May 1, 1990 -- The property was placed in the C-S-C (Commercial Shopping Center) Zone upon adoption of the Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity and Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67.

February 28, 1991 – The Prince George’s County Planning Board approved a minor change to the Site Plan to add an additional service bay.

July 11, 1996 – The Planning Board approved a minor change to add one additional pump island, reconfigure the existing islands, cover the pumps with canopies, reduce the size of the Car Wash building, and slightly reconfigure a parking area. The Applicant was granted Alternative Compliance (AC-98036) soon thereafter, prior to permits being issued.

(3) The 1990 Langley Park-College Park-Greenbelt Master Plan and Sectional Map Amendment recommends a service/commercial use for the subject property. The 1990 Langley Park-College Park-Greenbelt Sectional Map Amendment zoned the subject property from the C-1 to the C-S-C Zone in accordance with this recommendation. The 2002 Prince George’s County Approved General Plan placed the site in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to-high-density neighborhoods.

(4) The surrounding neighborhood is characterized by R-18 (Multifamily Medium Density Residential) zoned garden apartments, with service and convenience/commercial uses along New

Hampshire Avenue and East-West Highway (to Red Top Road).

(5) The neighborhood is bounded to the north by East-West Highway (MD 410), to the west by New Hampshire Boulevard (MD 650), and to the south and east by the Pepco power transmission line. This is essentially the same neighborhood as was accepted in the previous Special Exception Application for the subject property, SE-3919.

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

- | | |
|----------------|--|
| North - | Across East-West Highway is a small strip of convenience/commercial uses in the C-S-C Zone |
| East & South - | Across Red Top Road and Greenbrier Avenue are garden apartments in the R-18 Zone |
| West - | A U-Haul truck rental center and garage in the C-S-C zone. |

Applicant's Proposal

(7) The Applicant is proposing to expand the Food or Beverage Store and service area at an existing full-service Gas Station, Food or Beverage Store, and Car Wash in the C-S-C Zone. A Gas Station and Car Wash require approval of a Special Exception Application in the C-S-C Zone, while a Food or Beverage Store is a permitted use.

LAW APPLICABLE

(1) A Special Exception for a Gas Station in the C-S-C Zone is permitted pursuant to Section 27-461(b)(1)(B) in accordance with Section 27-358 of the Zoning Ordinance. All Special Exceptions must be found to comply with the general criteria of Section 27-317.

(2) Section 27-358 states:

- (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 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

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.

(3) Section 27-317 states:

(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 Tree Conservation Plan.

(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).

(4) A Variance is permitted in accordance with Section 27-230(a):

(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.

Burden of Proof

(5) The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Special Exception use. The Special Exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Plan.

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 Board 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. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. 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. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested Special Exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(6) The appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A2d 1253 (1995).

(7) The approval of Special Exception 4676 for a Gas Station is in accordance with the District Council's legislative intent that the "necessary to the public in the surrounding area" provision in §27-358(d)(1) is tantamount to a finding that a proposed Gas Station is "convenient, useful, appropriate, suitable, proper, or conducive" to providing fuel to the motoring public. Thus the Zoning Ordinance requires a standard less strict than that expressed in Brandywine Enterprises, Inc. v. County Council, 117 Md. App. 525, 700 A2d 1216 (1997) and more stringent than that expressed in Baltimore County Licensed Beverage Assoc., Inc. v. Kwon, 135 Md. App. 178, 761 A2d 1027 (2000).

CONCLUSIONS OF LAW

General Requirements

(1) Section 27-317(a) requires that the Proposed Use and Site Plan be in harmony with the general purposes of the Zoning Ordinance, §27-102, the general purposes of the Commercial Zones, §27-446(a), and the specific purposes of the C-S-C Zone, §27-474(a)(1).

(2) The instant Application is in harmony with the general purposes of the Zoning Ordinance as follows:

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

The Gas Station existing on the subject property was approved by SE-222 in 1955 and built soon thereafter. The site also received approval of a major expansion in 1990 (SE 3919) and approval of a minor revision in 1991 (ROSP 3919) to add a service bay. In 1996, ROSP 3919-02 was approved for further minor revisions. These expansions demonstrate that the use has indeed operated conveniently for the public, and its long history in the neighborhood demonstrates also that it has operated without negative impact on the health, safety, morals, comfort, and welfare of the present and future inhabitants of the County.

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

The subject property is located in the Developed Tier in the General Plan. The General Plan does not make recommendations for specific properties or uses; rather, it sets forth goals, objectives and policies to guide the overall direction of development in the county. One of the goals for the Developed Tier is to “Renew/redevelop commercial strips,” (p. 32). The area along East-West Highway and New Hampshire Avenue has developed with strip centers. The proposed Special Exception upgrades the site and is consistent with the goals and objectives of the Developed Tier.

The 1989 Master Plan for Langley Park-College Park-Greenbelt and Vicinity, recommended service commercial land use for the subject property. The subsequent Sectional Map Amendment rezoned the property from the C-1 Zone to the C-S-C Zone in accordance with County policy to consolidate the older C-1, C-2, C-C and C-G zoning categories into the C-S-C Zone. There is no discussion in the Master Plan specifically about the instant property. The Master Plan simply recognized the long standing commercial uses in the area and placed the property in the C-S-C Zone per the county policy. As a Special Exception permits approval of a Gas Station and Car Wash in the C-S-C Zone, this Application is consistent with the area Master Plan.

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

The subject property is located within a densely and intensely developed part of the Developed Tier. Public facilities are already in place to serve it, including water and sewer, and nearby police, fire and emergency services. The use is located near the intersection two major roadways, East-West Highway and New Hampshire Avenue.

(4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;

The proposed expansion of the Gas Station and Food or Beverage Store on the subject property is orderly. Approval of this Special Exception on this property recognizes the need for this business to expand, and its expansion will not negatively impact the needs of agriculture, housing, and industry. Land for these activities is available in more appropriate areas throughout the county.

(5) To provide adequate light, air, and privacy;

The proposed use, as demonstrated by the Special Exception Site and Landscape Plans, Exhibits 37 and 38(a), meets the regulations contained in the Prince George’s County Zoning Ordinance and Landscape Manual. The proposed building is one story, setback appropriately from the property lines, and 10.7 percent of the property is proposed for green area. Thus, adequate light, air, and privacy are assured.

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

The Gas Station was constructed shortly after its approval in 1955. It abuts streets on three sides and abuts a truck rental facility on the fourth. Across East-West Highway are strip commercial uses. Across Red Top Road to the east are Hampshire View high-rise apartments and across Greenbriar Avenue to the south are Hampshire View low-rise apartments. There is no evidence that the use, in its original or current forms, has ever had any adverse impacts on these apartments, and the minor addition to the Food or Beverage Store will not alter that finding.

(7) To protect the County from fire, flood, panic, and other dangers;

None of these dangers will result from the proposed use. The instant proposal must satisfy all county regulations regarding fire and flood. The Fire Safety Code (Subtitle 11) will protect from fire (sprinklers will be required); the stormwater regulations found in the Water Resources Protection and Grading Code (Subtitle 32) will protect from flood. No panic or other dangers are anticipated as a result of the Car Wash or the proposed expansion of the Gas Station and Food or Beverage Store.

(8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;

This purpose is not relevant to the proposed use of the subject property. No housing is proposed. The various uses on the property are adequately buffered from adjacent residential uses by landscaping, screening and roads.

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

The expansion of the Food or Beverage Store allows for the continued employment of personnel on-site and increases the tax base of the subject property by increasing the commercial gross floor area.

(10) To prevent the overcrowding of land;

The C-S-C Zone is designed to provide for intense commercial development. Minimal setbacks are required. The instant proposal satisfies the requirements of the Landscape Manual and provides 10.7 percent of the land area as green area. On-site facilities are designed in an efficient, non-crowded manner, allowing for logical and free flowing circulation through the subject property.

(11) 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;

The Gas Station and Car Wash have operated on the site for many years with no negative impact on traffic. Minor expansion of the Food or Beverage Store will not pose any additional pressure on the transportation system. The M-NCPPC Transportation Section noted that most of the additional trips to the site are “already on the road or nearby” and that “minimal effects are expected from the Food or Beverage Store expansion”.

(12) To insure that social and economic stability of all parts of the County;

Gas Stations, Food or Beverage Stores and Car Washes are part of the fabric of a community. These necessary uses, on this site for many, many years, already contribute social and economic stability of the county and will continue to do so.

(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

There are no stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas or other similar features on the property. No undue air or water pollution emanate from the subject property. The Gas Station and Car Wash are subject to requirements for gas storage and capture of runoff. The Gas Station has operated in conformance with the applicable laws for nearly 60 years and will continue to do so. Since all repairs occur in a wholly enclosed building, no undue noise is expected.

(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and

The subject property is in the Developed Tier in an area densely and intensely developed. The Gas Station and Food or Beverage Store expansion will have no impact on areas of particular scenic beauty or natural features.

(15) To protect and conserve the agricultural industry and natural resources.

No natural features exist on this already developed site. Agricultural land will not be used to allow for this expansion. §27-317(a)(1)

(3) The instant Application is also in harmony with the general purposes of the Commercial Zone, §27-446(a):

(1) To implement the general purposes of this Subtitle;

In general, the purposes of the Zoning Ordinance are aimed at protecting health, safety and welfare, and promoting orderly economic development. The Gas Station has existed for nearly 60 years, and the Car Wash was added in the mid-1990s. It has operated with no evidence of adverse impacts on public health, safety and welfare. The proposed expansion of the Food or Beverage Store allows an existing business to continue to thrive in an orderly manner. The proposal implements the purposes of the Zoning Ordinance.

- (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;**

Clearly, the location is appropriate for a Gas Station and Car Wash: the uses have existed and succeeded for many years at this location with no negative impacts on the surrounding area. This supports the conclusion that the Gas Station and Car Wash meet the needs of the residents and businesses in the area.

- (3) **To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;**

The instant proposal is for a service commercial use. Adjacent uses are both service and retail commercial uses, all of which are highway oriented, with easy access to both the road system and each other.

- (4) **To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;**

The Site Plan demonstrates landscaping in accordance with Landscape Manual requirements, as permitted by Alternative Compliance 98036. Screening along the property lines is also provided. Again, the uses have existed on the subject property for many years with no apparent impacts on surrounding properties. The expansion of the Food or Beverage Store and site upgrades, including circulation patterns, will have no adverse impacts on adjacent properties.

- (5) **To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;**

Four driveways serve the property: two from East-West Highway and two from Red Top Road. The driveway closest to the residential properties to the south is an exit only from the Car Wash. It is difficult to envision anyone other than residents exiting the site and turning into the residential neighborhood. Queuing for the Car Wash, should it ever back out onto Red Top Road, would be from the driveway farthest from the residential uses to the south. No traffic congestion is expected as a result of this proposal.

(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;

The purpose of the General Plan is to “provide broad guidance for the future growth and development of Prince George’s County while providing for environmental protection and preservation of important lands” (p. 13). It divided the county into three tiers, Developed, Developing and Rural. The General Plan placed the Property in the Developed Tier. One of the goals for the Developed Tier is to “Renew/redevelop commercial strips” (p. 32). The area along East-West Highway and New Hampshire Avenue has developed with strip centers. The proposed Special Exception upgrades the site and is consistent the purposes of the General Plan and the goals of the Developed Tier.

The 1989 Master Plan for Langley Park-College Park-Greenbelt and Vicinity, recommended service commercial land use for the subject property. There is no discussion in the Master Plan specifically about the subject property. The Master Plan simply recognized the long standing commercial uses in the area and placed the subject property in the C-S-C Zone per the county policy. As a Special Exception permits approval of a Gas Station and Car Wash in the C-S-C Zone, this Application is consistent with the area Master Plan.

(7) To increase the stability of commercial areas;

The proposed Special Exception is a major change to an existing Gas Station and Car Wash. The change is to increase the size of the Food or Beverage Store on-site, and redesign the Car Wash layout. Upgrades to the site are proposed, including landscaping and store upgrades. These enhancements and the expansion of the Food or Beverage Store promote the stability of this commercial area, replete with service and retail commercial uses.

(8) To protect the character of desirable development in each area;

The subject property is in a transitional area between heavy intense, highway oriented commercial uses and medium-to-high density residential development. The existing uses have operated in this transitional area well for decades, with no apparent negative impacts on the character of the area. The Applicant feels that it is time to upgrade the Food or Beverage Store on the site. Upgrading the facility, including façade changes, can only enhance the character of the area.

**(9) To conserve the aggregate value of land and improvements in the County;
and**

Upgrading the site and increasing the size of the Food or Beverage Store protects the value of land and adds to the value of improvements in the County. Adequate screening and landscaping protects surrounding land values.

(10) To enhance the economic base of the County.

Gas Stations and Car Washes are necessary components of the commercial network in the County. They add to the economic base and convenience for residents. The instant Gas Station and Car Wash have existed, by Special Exception approval, on this property for nearly 60 and 20 years, respectively. Increasing the size of the Food or Beverage Store adds to the economic base by providing additional commercial space in an area already deemed appropriate for this use by the County. §27-317(a)(1)

(4) The instant Application is also in harmony with the specific purposes of the C-S-C Zone, §27-454(a)(1), as follows:

(A) To provide locations for predominantly retail commercial shopping facilities;

The C-S-C Zone also allows for many service commercial uses. This stretch of East-West Highway and New Hampshire Avenue is replete with strip commercial centers, occupied with many retail opportunities. The Gas Station and Car Wash add to the convenience shopping experience for residents in the area. Moreover, while the instant Application is for the Gas Station and Car Wash, it is in fact simply a major change to an existing Special Exception to allow the expansion of the retail component of the use – the Food or Beverage Store on the site.

(B) To provide locations for compatible institutional, recreational, and service uses;

The site is ideal for the continuation of the existing Gas Station and Car Wash. These are service commercial uses that blend compatibly in the area. Adjacent properties are developed with auto and vehicle related uses, including a truck and automobile rental operations. The instant use is screened and amply buffered from the residential uses to the south across Greenbriar Avenue.

(C) To exclude uses incompatible with general retail shopping centers and institutions; and

The expansion of the existing Food or Beverage Store and the Gas Station and Car Wash are all compatible with the retail shopping facilities nearby.

(D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

This Purpose is not applicable to the instant proposal. §27-317(a)(1)

(5) The existing uses have met the requirements of the Zoning Ordinance since their initial approval by the District Council in 1955. However, redevelopment of this older site will bring the subject property into conformance with current Landscaping requirements, current Stormwater

Management requirements, and current Building and Fire Protection requirements. On November 1, 2012, a Stormwater Management Concept Plan was approved by the Department of Public Works and Transportation (DPW&T). However, that approval expired on May 4, 2013 and will need to be renewed. Redevelopment of the property with commercial uses is consistent with the Master Plan land use recommendations. With the recommended conditions, the proposed use and Site Plan are in harmony with the purposes of this Subtitle. §27-317(a)(1)

(6) The Applicant has obtained approval of Alternative Compliance for the proposed landscaping, and the proposed redevelopment of the site meets the standard zoning requirements of the C-S-C Zone. With the recommended conditions of approval, the proposed use will be in substantial conformance with all of the applicable requirements and regulations of this Subtitle. §27-317(a)(2).

(7) The Langley Park-College Park-Greenbelt Master Plan and Sectional Map Amendment recommends a service/commercial use for the subject property, and the proposed use conforms to the General Plan's vision for the Developing Tier for a nonresidential land use. Therefore, the proposed use will not substantially impair the integrity of any validly approved Master Plan or the General Plan. §27-317(a)(3).

(8) A Gas Station has been in continuous operation on the subject property since the District Council's approval of SE-222 in 1955, and it has had no adverse effects on the health, safety, or welfare of residents or workers in the area. In consideration of the findings required for a Special Exception, the Transportation Planning Section reviewed the site for health, safety, and welfare issues within the immediate area of the property, as well as, for Master Plan consistency. The Applicant's proposal does not raise any off-site transportation adequacy issues. §27-317(a)(4)

(9) In approving the original Special Exception Application in 1955 and the second in 1990, the District Council found that the use would not be detrimental to the use or development of adjacent properties or the general neighborhood. In 1991 and again, in 1996, the Planning Board heard and approved minor revisions for the property, each time finding that the use would not be detrimental to the use or development of adjacent properties or the general neighborhood. No evidence to the contrary has been adduced during the instant Application process. §27-217(a)(5)

(10) The site is exempt from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance and there are no other environmental issues related to the Applicant's proposal. Because the site is less than 40,000 square feet in size and has no previous approved Tree Conservation Plans, a standard exemption letter from the Woodland Conservation Ordinance was issued by the Environmental Planning Section on September 23, 2011. As it has now expired, a new letter must be obtained. (Exhibit 7) §27-317(a)(6)

(11) There are no regulated features on the subject property that would require preservation and/or restoration. §27-317(a)(7)

Gas Station

(12) The subject property has approximately 187 feet of frontage along East-West Highway, approximately 160 feet frontage along Red Top Road, and approximately 101.5 feet of frontage on Greenbriar Avenue. §27-358(a)(1)

(13) The subject property is not located within 300 feet from any lot on which a school, outdoor playground, library or hospital is located. §27-358(a)(2)

(14) The proposed use will not include the display and/or rental of cargo trailers, trucks, or similar uses. §27-358(a)(3)

(15) The subject property will not be used for the storage of wrecked or junked motor vehicles. §27-358(a)(4)

(16) On April 17, 1991, the Prince George's County Board of Appeals, in Appeal No. 1103, granted a variance of eight feet from the 20 foot setback for driveways from point of curvature for the subject property and the subject property was developed with the curvature in accordance with that approval. §27-358(a)(5)

(17) All access driveways are defined by curbing. §27-358(a)(6)

(18) There are 5 feet in width sidewalks provided along both East-West Highway and Red Top Road. §27-358(a)(7)

(19) All of the gasoline pumps and service appliances on the subject property are located at least twenty five (25) feet behind the street line with the exception of one pump island for which an 8.5 feet is requested as a part of the instant Application. §27-358(a)(8)

(20) The Site Plan, (Exhibit 37), provides for a six foot high sight tight fence around the accessory building and the Application is in compliance with the remainder of the requirements of §27-358(a)(9).

(21) The Site Plan (Exhibit 37) provides details on architectural elements including elevation depictions of each facade and a schedule of exterior finishes which are compatible with existing and proposed surrounding development. §27-358(a)(10)

(22) The Site Plan is in compliance with the requirements of §27-358(b). (Exhibit 37)

(23) The Site Plan, Exhibit 37, includes Note 30 in compliance with §27-258(c).

(24) The Gas Station on the subject property has served the public at this location for over fifty years. It has previously been determined that the Gas Station's use is necessary to the public in the

surrounding area and that it does not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses. The proposed revisions will expand and modify the property in accordance with modern industry standards. The Gas Station's economic success and proposal to expand demonstrates that it has done well in the neighborhood because it is useful and necessary, after several decades, the Gas Station has become a fixture in the neighbor. §27-358(d).

Variance

(25) The last revised Site Plan for this Special Exception use was approved in 1996. The Site Plan for that Revision included notes that Variances for the pump island and canopy setbacks had been approved. The Applicant was able to obtain permits and construct improvements based on the Approved Site Plan. Unfortunately, neither Staff nor the Applicant can now find evidence that those "Variances" were ever granted. Out of an abundance of caution, the Applicant is now seeking the variances as part of this new Special Exception Application. Both of the requested variances are for the required setback along East-West Highway (MD 410), 1.4 feet of the ten-foot setback for the canopy (27-462(b)) and 8.5 feet of the 25-foot setback for the pump island (§27-358(a)(8)). Approval of the Variances would validate existing structures.

(26) The subject property has a regular shape, but is constrained by the placement of the existing building on the site, which is a remnant of the first Gas Station built on this site in the 1950s. Aerial photographs from the 1960s and 1970s show a pump island similarly close to MD 410, if not closer. The original Site Plan for SE-3919 (the last full Special Exception for the site) shows the pumps relocated to meet the 25-foot setback, however the subsequent revisions to that Plan from the 1990s show the island in its original position, noting that a Variance had been approved for the pump island as well as the canopy. Several building permits were approved based on the Site Plan. While it is possible that the Plan is correct, Staff could find no evidence of a variance being sought or granted. Regardless, it should be noted that at least three times the location has been approved by the county, once through certification of a Revision of Site Plan Application and twice through the approval of permits. Staff would conclude this constitutes an extraordinary situation. §27-230(a)(1)

(27) Requiring the 25-foot setback for the pump island and 10-foot setback for the canopy would result in an undue hardship to the applicant. Requiring the Applicant to move the existing structures to meet the setback from MD 410 is not necessary or reasonable. The 1.4 foot variance for the canopy is negligible and is only noticeable by a surveyor's measuring tools. The pump island is located in the same location as previous such pumps have existed for the past six decades. To insist that the Applicant now move these structures would be an undue hardship. §27-230(a)(2)

(28) The Variance for the setbacks will not substantially impair the intent, purpose, or integrity of the Langley Park-College Park-Greenbelt Master Plan and Sectional Map Amendment, which recommends a service/commercial use for the subject property. The use is permitted by Special Exception in the C-S-C Zone and is therefore presumed to be compatible with the surrounding area and has been found to be so on several occasions by the District Council. §27-230(a)(3)

(29) Based on the proposed mix of uses, 19 parking spaces are required and 20 parking spaces are provided. Additionally, one loading space as required is provided to the rear of the existing Food or Beverage Store/service bays. Exhibit 37

Landscape Manual

(30) Due to the proposed increase in gross floor area of 1,252 square feet, the site is subject to the requirements of Section 4.2, Landscape Strips along Streets, and Section 4.7, Buffering Incompatible Uses, of the 2010 Prince George's County Landscape Manual (Landscape Manual). The Application is subject to Section 4.4, Screening Requirements, as is all development, and Section 4.9, Sustainable Landscaping Requirements, because other sections of the Landscape Manual require the installation of plant material. The site is exempt from Section 4.3, Parking Lot Requirements, because no new impervious area is being created for parking or loading.

(31) The subject property has approved Alternative Compliance (AC-98036), which was approved on November 11, 1998. Alternative Compliance AC-98036 granted Alternative Compliance pursuant to Section 4.2 of the 1989 Landscape Manual for relief from the buffering requirements along East-West Highway. Alternative Compliance AC-98036 required a low brick wall supplemented by a three- to four-foot-wide landscaped strip planted with one shade tree, three ornamental trees, and 12 shrubs. In the northwestern corner of the site along East-West Highway, it appears that the dimensions of an approved planting bed were reduced somewhat to provide a wider one-way access drive from East-West Highway. While the area available for planting has been reduced, the Landscape Plan provides the full amount of plant material required by the AC-98036. Staff finds this in substantial conformance with the requirements of the Alternative Compliance approval.

Tree Canopy Coverage

(32) This Application is subject to the Tree Canopy Coverage Ordinance as it proposes disturbance of 1,500 square feet or greater. The Special Exception area of 0.75 acre is zoned C-S-C and is required to provide ten percent, or 3,267 square feet, of the Tree Canopy Coverage. A Tree Canopy Coverage worksheet has been provided on the Landscape Plan specifying that the requirement is being met through proposed on-site tree planting for a total of 3,290 square feet. Exhibit 38(a)

Zone Standards

(34) The Applicant's proposal is in compliance with the requirements of the C-S-C Zone.

Signage

(35) The Applicant is proposing to relocate the existing 15-foot-high pylon sign from its location in the northeastern corner of the site to the location shown on the Approved Site Plan for SE-3919.

DISPOSITION

SE 4676 and Variances for SE 4676 are Approved, subject to the following Conditions:

- (1) Prior to issuance of a building permit, Stormwater Management Concept Plan 1500-2009-01 shall be renewed and revised to be consistent with the layout shown on the Approved Special Exception Site Plan.
- (2) Prior to issuance of a building permit, the Applicant shall obtain a new Standard Letter of Exemption from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance.

The Approved Site Plan is Exhibit 37 and the Approved Landscape Plan is Exhibit 38(a).