

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

**SPECIAL EXCEPTION  
4822  
And  
ALTERNATIVE COMPLIANCE  
AC-19007**

**DECISION**

Application: Gasoline Station and Food or Beverage Store  
Applicant: Michael Puckett, et.al., Owners/ 7-Eleven, Inc. and  
Verdad Real Estate & Construction Services (VRE  
District Heights, LLC.)  
Opposition: None  
Hearing Dates: September 11, 2019  
Hearing Examiner: Maurene Epps McNeil  
Disposition: Approval with Conditions

**NATURE OF REQUEST**

(1) Special Exception 4822 is a request to develop 0.807- acre of land in the C-S-C (Commercial Shopping Center) Zone as a four (4) multiproduct dispenser ("MPD") Gasoline Station and 2,993-square-foot Food or Beverage Store.<sup>1</sup> The subject property is located at the southeast quadrant of the intersection of Marlboro Pike and Walker Mill Road, and identified as 5410 and 5416 Marlboro Pike, District Heights, Maryland.

(2) The State Department of Assessments and Taxation has certified that Applicants 7-Eleven, Inc. and VRE District Heights, LLC are in good standing to conduct business within the State of Maryland. <sup>2</sup>(Exhibits 25 and 26) Owners Michael Puckett, Gary Puckett, Mary Cranford and Cathy Horrell have entered into a contract to sell the property to 7-Eleven, Inc. (as Assignor/Purchaser) and VRE District Heights, LLC. (as Assignee). (Exhibit 27; T. 21)

(3) The Technical Staff recommended approval of the Application with conditions. (Exhibit 19) The Planning Board chose not to schedule a public hearing on the request, and, therefore, accepts Staff's recommendation as its own.

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

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<sup>1</sup> Applicant's counsel believes Applicant can operate the Food or Beverage Store by right but agreed to the review of said use as a special exception under an abundance of caution. (T.6-9)

<sup>2</sup> The ultimate developer of the site, if the request is approved, will be VRDT Real Estate and Construction Services, the parent company of VRE District Heights. (T. 15-17)

## FINDINGS OF FACT

### Subject Property

(1) The subject property is an unsubdivided area of land that consists of three parcels (Parcels 35, 36 and 38 shown on Tax Map 81 and Grid A1) which have a combined total of 35,133 square feet. (Exhibit 15(c)) It is improved with a 9,211-square-foot auto repair facility and paved parking areas. (Exhibit 15(b))

(2) The Application is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because it has no prior Tree Conservation Plan approvals and the site is less than 40,000 square feet in size. (Exhibit 10) The Department of Permitting, Inspections and Enforcement (“DPIE”) has issued a letter of stormwater management concept approval for the site which expires on November 14, 2021. (Exhibit 11)

(3) The Environmental Planning Section of the Maryland-National Capital Park and Planning Commission (“MNCPPC”) has issued a Natural Resources Inventory (“NRI”) Equivalency Letter for the site (NRI-138-2018). (Exhibit 12) There are no regulated environmental features on site. (Exhibit 19, p. 19 of backup)

(4) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Exhibit 15(c))

### Surrounding Property/Neighborhood

(5) The neighborhood is defined by the following boundaries: on the north, by Brooks Drive, Walker Mill Road and Rollins Avenue; to the west and south by Pennsylvania Avenue; and, to the east, by Silver Hill Road.

(6) The following uses surround the subject property:

- North – Walker Mill Road, and beyond, vacant land in the R-55 Zone and two Eating and Drinking Establishments in the C-S-C Zone
- South – Vacant land in the C-S-C Zone
- East – Single-family detached dwellings in the R-55 Zone.
- West – Marlboro Pike, and beyond, a car wash and a commercial multi-tenant building in the C-S-C Zone.

### Zoning

(7) The subject property lies within an area governed by the 2009 Marlboro Pike Sector Plan and Sectional Map Amendment, and the 2010 Subregion 4 Master Plan

and Sectional Map Amendment (“SMA”). The Subregion 4 Master Plan notes that its adoption “does not alter the legal status of the Marlboro Pike Sector Plan as the guiding policy for the area....” (2010 Master Plan, p. 9)

(8) The 2009 Marlboro Pike Sector Plan included a few goals/policies applicable to the instant request. First, it suggested that “[e]nhancing streetscape conditions to encourage pedestrian activity will help Marlboro Pike evolve into a thriving, community-oriented main street.” (2009 Marlboro Pike Sector Plan, p. 56) Next, it seeks the provision of bike lanes to encourage this increasingly popular mode of transportation. (2009 Marlboro Pike Sector Plan, pp. 61-62) The Sector Plan also recognized the need to require improved stormwater management facilities “to meet the Maryland Department of the Environment’s (MDE) most recent standards” and design “in a way that minimizes environmental damage.” (2009 Marlboro Pike Sector Plan, pp. 74-75)

(9) The 2014 General Plan (“Plan Prince George’s 2035”) placed the property within the Established Communities. The vision for these communities is “context-sensitive infill and low-to medium - density development.” (2014 General Plan, p.20)

(10) Applicant’s witness discussed the applicability of various functional master plans to the instant request, *infra*.

### **Applicant’s Request**

(11) Applicant proposes to raze an existing 9,211-square-foot auto repair facility (Oakcrest Auto Body and Paint Shop) and construct a 2,993-square-foot 7-Eleven Food or Beverage Store and an associated Gas Station with four (4) multiproduct dispensers. The facilities are proposed to operate 24 hours a day.

(12) Ms. Laverna Olkowski, senior real estate representative for 7-Eleven, prepared an internal market analysis for the site, which included the following relevant information:

The Primary Market Area is identified as a 1-mile radius around the site. Within this Primary Market Area (“PMA”) is a population estimate of 17,848 persons, reflecting a growth of 1.26% between 2000 and the current year. There are 7,071 households, reflecting a growth of .05% during the same period.

The average household income is \$65, 357 with 2.52 persons per household. There are 9, 192 vehicles, based on 1.3 vehicles per household.

It is estimated that there are 7,156 workers over age 16+ that need transportation to work. Of these, 4,135 (57.78%) drove alone, 1,475 (20.61%) car pooled, 1,399 (19.55%) took public transportation, 51 walked, 19 by other means and 72 (1%) worked at home. The average travel time to work for these residents is 35.4 minutes....

Shell – 5921 Silver Hill Rd.

- i. This is primarily a service station.
- ii. 5 MPDs

- iii. 1869 Gross sf
- iv. 8 parking stalls
- v. This is a service station with 3 bays in the front. There is no upfront parking and the marked parking is near the street. There are 2 access points on each road. On Silver Hill Rd., the access drives are right in/right out due to the median. The position of the service bays and the fuel islands make the maneuverability in this lot difficult and unsafe.  
The Existing Conditions in Regard to Vehicular Access, Pedestrian Accessibility, & Pedestrian Movement within the Site are Unsafe & Do Not Meet Today's Land Development Standards.

#### 7-Eleven- Proposed Development Site Characteristics

- 148 Fresh Food Offerings Available and over 50 offerings in Fast Food and over 200 offerings in packaged bakery.
- .807 Acre
- Full Movement Access on Marlboro Pike and Walker Mill Rd.
- 2993 Gross SF
- 4 MPDs
- Life Safety Requirements for Vehicular & Pedestrian Movement To Be Satisfied During Design Phase
- Ample Parking Available to Meet Customer demand....

If we are reasonable in our effort to determine what is necessary for any given retailer, we must look at each location on a case-by-case basis. Obviously, there may be instances where certain rules of thumb apply, but not all locations fit into a "one size fits all" mold.

It is our professional opinion that the demand of gasoline is more dependent on reasonable convenience to the public and speedy transactions than it is on how much storage capacity is available under the ground. The facility that can dispense the greatest number of gallons to the largest number of vehicles in the least amount of time will be the obvious choice for the average driver, and in particular, those during rush periods.

It is reasonable to assume that 7-Eleven, the largest (in terms of number of locations 8,303 in US) and considered one of the industry leaders in progressive growth and marketing ideas for the Convenience Gas industry, will continue to select new locations that have the ability to include both gas and convenience store offerings. As part of the rationale for this specific location in District Heights, the connectivity and free flow of site provide an excellent opportunity to offer gasoline and fresh food offerings to their customers and other shoppers in a safe, convenient location that meets current land development requirements.

We therefore conclude that the conservative demand for gasoline in this market area exceeds the current supply per year. We have a very high level of confidence in this conclusion that the demand will more than justify the addition of this proposed gasoline convenience outlet....

(Exhibit 14, pp. 2, 4 and 7)

(13) Ms. Olkowski reiterated in her testimony that 7-Eleven chose the spot to also be of convenience to the residents in the densely populated area:

So based on ... the population density and the traffic we felt like putting a C-store with fuel would be more convenient for that ... densely populated area there.... So, we're trying to with 7-Eleven be more convenient so people can come in do their food shopping and get their fuel at the same time, and not have to, you know, go to so many different locations.

(T. 24)

(14) Ms. Olkowski further noted that 7-Eleven hired Valbridge Property Advisors, a third-party reviewer, to prepare an additional need analysis for the Application. (T. 22) Mr. Edward Steer, the managing director of planning and market analysis for Valbridge Property Advisors, accepted as an expert in the area of market analysis and need assessment, prepared the additional need analysis. (Exhibit 31) This analysis provided, in pertinent part, as follows:

The proposed improvements include a gasoline station with four multi-product dispensers (MPDs) under a single canopy, in addition to an approximately 3,993 [sic] sq.ft. convenience store. The subject property has excellent frontage on the westbound side of Marlboro Pike at an intersection with Walker Mill Road. The site is approximately a third of a mile northeast of Maryland Route 4 (Pennsylvania Avenue) and 1.25 miles east of the Washington, D.C. city line.... Both Marlboro Pike and Walker Mill Road serve a significant volume of daily traffic coming on and off of the Capital Beltway and Pennsylvania Avenue, including commuters, regional travelers as well as some commercial trips. This is further demonstrated by the Maryland Department of Transportation State Highway Administration's estimated annual average daily traffic (AADT) count in 2017 on Marlboro Pike just north of this location as 22, 465 AADT on its section between Pacific Avenue and MD-458, 28,650 AADT on Pennsylvania Avenue and 25,052 [AADT] on Walker Mill Road.

The subject is in a commercial zone and surrounding land uses are for the majority a mix of other commercial uses and medium density residential development. There are three gas stations within .15 miles of the proposed subject along Marlboro Pike. The services that will be offered by the proposed 7-Eleven automobile filling station and convenience store are, therefore, supportive of existing development nearby and transient traffic, given the role the nearby highway network plays as a major commuter route....

We have defined the subject fueling stations' trade area as the area centered primarily on the Marlboro Pike Corridor between the District of Columbia and Forestville. The trade area extends northward to Central Avenue (MD-214), effectively capturing commuters and consumer traveling out of the residential communities within Walker Mill and District Heights. We judge that this area is a reasonable representation of consumers seeking convenience store and fueling services along the course of their travel to and from work or routine shopping trips....

The trade area is populous and is projected to remain stable going forward to 2023. A moderate average income of \$69,939 enables a very solid 46.2% homeownership rate with homes being valued at an average of \$239,208 in 2018. The Census Bureau's American Community Survey for 2012-2016 estimates that there are roughly 1.6 vehicles per household on average and that the vast majority (70.6%) of workers drive to work. More than one-half of workers commute more than 30 minutes to work....

We find that the total demand available to gas stations within the District Heights trade area to be in the range of 29.9 million gallons per year. Although households residing in the District Heights trade area will account for a demand of 25.3 million gallons, we believe the demand is greater due to a daytime worker population which comprises roughly one-quarter of the total population....

We quantify unmet trade area demand (need) in the range of approximately 4 million gallons per year, based on a comparison of trade area consumption with the estimated gallonage pumped for the area by the existing service stations. We believe this is a conservative estimation, based on the estimated 1.36 million gallons of annual supply per station....

Valbridge concludes, therefore, that the public need/necessity for the proposed 7-Eleven automobile filling station in District Heights is evident based on our analysis....

We find that there is an estimated total demand for at least 29.9 million gallons of gasoline within the defined District Heights trade area, as determined by standard market research methodologies of residential and pass-through demand. The existing supply is approximately 25.88 million gallons per year, leaving a net unmet demand of approximately 4 million gallons. This number is not explicit, as we are unable to capture actual production volumes of competitive gas stations.

Considering the growth projected at residential neighborhoods such as Metro City coupled with existing employment and transient traffic, we believe the demand significantly exceeds the current supply in the trade area, especially when considering the relatively heavy traffic volumes seen coming through this area of Prince George's County. It is important to note that the availability of gas stations in the community offers mostly older, obsolete service stations with small kiosks or snack shops, which are not in demand by the current consumer. We find that many existing stations do not capture consistent levels of demand, and we judge that ... a substantial volume of trade will be handled by the few modern facilities proposed for the area such as the subject, that offer larger convenience spaces and services that are attractive to a broader market of consumers....

(Exhibit 31, pp. 3-4)

(15) Mr. Steere explained that traffic volumes used in his analysis were gleaned from state records, and he located gas stations within the defined market area. (T-29) He further clarified why he believes there to be a public necessity for both uses:

On page 24 where we talk about what a kiosk or a mini-convenience or limited selection store, traditional convenience store, 7-Eleven, fits it's sort of in the gray area between expanded convenience store and a hyper convenience store and you picture the hyper convenience store being the full blown [S]heets or Wawa that has, you know, a food counter and 7-Eleven is a larger store, but doesn't have the same fresh food offerings in most of those stores that I know of. So the other stores in this community, in this trade area were all ... kiosks or ... just the office bay or converted service bays. So what this site does is provides that linkage to provide the better community needs, I mean they only have to make one stop instead of two stops to get what they need on their way to work or on their way home. In the long run, we're reducing traffic turning movements to other sites, but at the same time it's the only way to really operate a gas station at an economy of scale because the number one thing that consumers of fuel want is the lowest price for quality fuel and so only the largest providers can provide the lowest price because they move so much more ... [that] they get a better wholesale rate on it, ... and can sell it for less. And so we end up with the greatest customer convenience in a combined facility rather than in an individual gas station....

(T.32-33)

(16) Mr. Nicolas Speach is a civil engineer. He prepared the Special Exception Site Plan and the Landscape Plan for the Application. (Exhibits 15 (a)-(c)) Mr. Speach offered the following testimony in support of the Special Exception Application and the request for Alternative Compliance to the Landscape Manual (AC- 19007):

So as you can see on the Site Plan we have one entrance off Marlboro Pike ... [and] one entrance off of Walker Mill that we are proposing. There are three existing entrances currently so

we're actually closing one of them for this new site. But the intent is to have the building in the back corner of the site.... [T]he building is smaller, it is a standard but it's tucked back into the side to try to help the rest of the site because the site is smaller than the typical. We do have four MPD's and the fuel canopy which we're locating up towards the intersection with the underground storage tanks pushed U-turn towards the intersection as well. We have storm water management up at the corner as well as in the southern tip of the site. Parking is located between the canopy and the building for the easiest access point to the building for convenience, as well as towards Walker Mill Road. The dumpsters are located toward the south end of the site between the building and the bioretention areas.... They will be screened in a full enclosure and screened by landscaping on the outside of that enclosure. We've got a proposed bike rack between the dumpster and the building. And then sidewalks throughout the site that connect to the right-of-way...

For [Section] 4.3 [of the Landscape Manual] we're requesting alternative compliance because we are ... required to meet 8 percent of interior landscape [and] [w]e are meeting a shade under 7, 6.9. So ... we are providing the amount of trees that are required to meet the standard. It's just in it we are slightly underneath the grade space because of the use and because it's not your typical parking lot with parking lot islands and ... there's got to be room for the fuel canopy. We are also requesting it for [Section] 4.7 because we're reducing the buffers in the backside of the site, slightly. We are proposing a fence as discussed previously so that reduces the buffer width that we are required to put in. And again ... we are providing more landscaping than what's required for meeting landscape on the southeastern side. So landscaping requirements are met [and alternative compliance is] ... truly just for buffer width.

(T. 41-42, 50)

(17) Applicant submitted architectural elevations for the property showing the Gas Station canopy, trash enclosures and the Food or Beverage Store. (Exhibits 15(l)-(m)). Applicants also provided a sign detail. (Exhibits (n)-(o)) The Food or Beverage Store will have a brick veneer. The trash enclosure will also be screened by landscaping. (T. 42)

(18) Applicant submitted a Lighting Plan that indicates there will be more than sufficient lighting of the site but none should spill offsite in a manner that could impact nearby residences. (Exhibit 15(g); T. 48)

(19) The two uses are required to provide 22 parking spaces (20 for the Food or Beverage Store). This number may be reduced to 18 utilizing a 20% joint parking lot reduction. Applicant requested a Departure from Parking and Loading Standards to further reduce the number of spaces provided, and this request was approved, as noted below.

(20) Mr. Mark Ferguson, accepted as an expert in the area of land use planning, prepared a written analysis, and testified, in support of the Application. He offered the following in support of his recommendation of approval of the Gas Station:

The criteria for approval of a Special Exception for a gas station in the C-S-C Zone are the general criteria for approval of a Special Exception of §27-317(a), and the special criteria for approval of a gas station of §27-358. The Technical Staff Report includes a discussion of the provisions of §27-355, the special criteria for approval of a food and beverage store; this planner is of the opinion that they are not applicable to the proposed development, because a food and

beverage store is a permitted use in the C-S-C Zone, and that gas stations are subject to a Special Exception in the C-S-C Zone, not a Detailed Site Plan. To the extent they do apply, however, this planner agrees with the Technical Staff's analysis....

The proposed gas station will be developed to provide substantive environmental and safety upgrades in the form of modern stormwater management (where none now exists) and a more-safely-located , reduced number of vehicular entrances, and will thus promote the health and safety of the present and future inhabitants of the County by continuing to provide for a safe and convenient accommodation of the shopping public....

[T]he General Plan classified the subject site in ... the Established Communities category... [an area] most appropriate for context-sensitive infill and low-to medium-density development.... Given its location at a site long used for auto-related use in a commercial cluster surrounding the Marlboro Pike/Walker Mill Road intersection, it is this planner's opinion that the approval of the subject application would constitute context-sensitive infill....

The sector plan... seeks continuous sidewalks along Marlboro Pike. It seeks to minimize driveway entrances, provide bike lanes, seeks to require the planting of canopy trees, seeks to require 10 percent tree canopy coverage, and seeks to require the upgrade of stormwater management to meet modern standards.... The proposed redevelopment will accomplish all of these policies and strategies....

The special exception area is not mapped as containing any Regulated Areas of the County's Green Infrastructure Network; as such, the subject application conforms to the Green Infrastructure Plan.

With regard to the Historic Sites and Districts Plan, no historic sites or resources are located within the vicinity of the subject site; as such, the approval of the subject application will have no adverse impact on this Functional Master Plan.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject application.

No proposed sites for Public Safety facilities are in the area affected by the subject application.

The Countywide Master Plan of Transportation includes the recommendations of the Marlboro Pike Sector Plan, which provides for expanded rights of way for the collector classification of both Marlboro Pike and Walker Mill Road. These expanded rights-of-way have been provided for on the Special Exception Site Plan. Finally, the Transportation Planning Section noted in its referral that roadway dedication to accommodate the Walker Mill Road Site Plan/Wide Sidewalk is not appropriate. As such, the subject application is in conformance with this functional master plan.

In conclusion, because the proposed gas station [is] not in conflict with the General Plan, the Sector Plan or the applicable Functional Master Plans, approval of the subject application will be in harmony with the Ordinance's purpose of implementing those plans....

Based upon an inspection of the proposed Special Exception Site Plan and to the best of this planner's professional knowledge, information and belief, that, with the approval of Alternative Compliance AC-19007 ... the proposed use will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance....

[I]t is the Applicant's belief that the subject Application is in harmony with the Purposes of the Zoning Ordinance generally to implement the General and Master Plans and to provide for the efficient and desirable use of land in accordance with those Plans. Accordingly, the approval of



the subject application will not impair the integrity of neither the approved Master Plan nor the County's General Plan....

[T]he substantive improvements to the existing development, including the consolidation and relocation of vehicular entrances along Marlboro Pike, and the incorporation of modern stormwater management into the proposed development will actively improve the health, safety and welfare of residents and workers in the area as compared to the development currently existing on the subject property....

This planner believes that the long existence of the existing auto repair facility indicates that the character of the service commercial component of the development will continue to be compatible with the surrounding commercial uses, and as such will not be detrimental to the use or development of adjacent properties or the general neighborhood....

No regulated environmental features exist on the subject site.

[T]his planner notes that ... the site is not located within the Chesapeake Bay Critical Area....

Both Marlboro Pike and Walker Mill Road have rights-of-way width of at least seventy feet, and the site has direct vehicular access to each. The subject site has 212.48' of frontage on Marlboro Pike, and 232.07' of frontage on Walker Mill Road....

No lots containing schools, hospitals or outdoor playgrounds exist within 300' of the subject site. The nearest such facility appears to be the Holly Springs apartments parcel on Marlboro Pike, located approximately 575' away to the east as the crow flies....

No display or rental of any vehicles is proposed at the subject site....

No storage or junking of any vehicles is proposed at the subject site....

The Special Exception Site Plan indicates that each of the proposed access driveways will be at least 35.2 wide. The edges of the driveways are 55' from the side lot line of the vacant paved lot facing Marlboro Pike, and 34' from the side lot line of the abutting single-family dwelling on Walker Mill Road. The proposed driveway along Marlboro Pike begins approximately 110' east of the point of curvature of the intersection; the proposed driveway along Walker Mill Road begins approximately 120' north of the point of curvature of the intersection....

The Special Exception Site Plan indicates a 5' wide sidewalk exists along the site's frontages along both Marlboro Pike and Walker Mill Road....

The dimensions of the gasoline pumps to the street line is not indicated on the Special Exception Site Plan; the setback dimensions of the canopy which hangs over them, however, indicate that the nearest gas pumps will be no closer than 32.67' to the closest street line....

No repair service is proposed....

The architectural details of the proposed structure are compatible with the roadside commercial character of the surrounding neighborhood, including the nearby small commercial strip centers to the east, west and south, the car wash and the Popeye's restaurant....

Topography of the subject lot and its surroundings has been shown on the subject Special Exception Site Plan; details for its construction are appropriately required by a condition proposed by the Technical Staff Report....

No exterior vending machines or a vending area are proposed; sales will be inside the proposed convenience store....

The establishment of a gas station use at the subject site along a commercial corridor at the intersection of two collector roadways is suitable and appropriate, as it is convenient and useful to the substantial traffic (2015 ADT: 22,434 vehicles per day on Marlboro Pike, no count available at this western end of Walker Mill Road) which passes the site....

Because the proposed use would replace a nonconforming service commercial use with a compatible service commercial use (with a permitted retail commercial component), because it is in the midst of a group of complementary commercial uses, including other service commercial uses, because it will be constructed to a high standard of site planning and architectural detail, 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....

In summary, this planner finds that the approval of the subject application would be in compliance with the general criteria for approval of a Special Exception found in § 27-317 (a), and the specific criteria for approval of a gas station found in § 27-358 of the Zoning Ordinance.

Additionally, it is this planner's opinion that because of: (1) the longstanding prior use of the subject site as an auto repair facility; (2) the site's location near the interchange of two collector roadways; (3) the proposed consolidation and relocation of existing vehicular entrances; (4) the provision of modern stormwater management; and (5), its architectural compatibility with the surrounding development, that the approval of this particular application would entail less adverse impact on the public health, safety and welfare than those inherently associated with gas stations, irrespective of their location in the C-S-C Zone.

(Exhibit 34, pp. 4-7, 9, and 12-17)

(21) Finally, Applicants agree with the conditions proposed by the Technical Staff and the Alternative Compliance Committee. (T. 25 and 51)

### **Technical Staff and Other Agency Comment**

(22) The Alternative Compliance Committee and the Planning Director have recommended approval of the Applicant's request for alternative compliance to the requirements of the Landscape Manual, reasoning as follows:

SE-4822 ... proposes to demolish an existing commercial building and develop the site with a 7-Eleven food and beverage store [sic], in combination with a gas station, with associated improvements. The SE is subject to Section 4.2, Requirements for Landscape Strips Along Streets; Section 4.3, Parking Lot Requirements; Section 4.4, Screening Requirements; Section 4.6-2, Buffering Development from Special Roadways; Section 4.7, Buffering Incompatible Uses; and Section 4.9, Sustainable Landscape Requirements of the Landscape Manual. An Alternative Compliance (AC-19007) application has been filed from the requirements of Section 4.3, for a reduction in the interior parking lot landscaping, and from Section 4.7, for a reduction in the width of the bufferyard along the eastern property line....

Section 4.3 (c)(2)(A), Table 4.3-1 sets forth the requirements for the minimum percentage of interior planting area based on the proposed parking lot size, which in this case is 8 percent of 8,731 square feet, or 699 square feet. The applicant is requesting approval of an alternative design to allow for a reduction in the required interior planting area from the required 8 percent to

6.9 percent, or 607 square feet. The applicant proposes to provide two of the required three shade trees, which is appropriate for the reduced planting area. However, the Committee recommends that larger caliper shade trees be provided, to allow for more immediate shading of the pavement area.

The Alternative Compliance Committee finds the applicant's proposal equally effective as normal compliance with Section 4.3, if approved with conditions, given the increase in the size of the shade trees and the minor nature of the reduction....

The applicant requests alternative compliance from the requirements of Section 4.7 by proposing an alternative solution to providing the required bufferyard along the eastern property line, adjacent to an existing one-family detached dwelling. In this case, the proposed use is high-impact, which requires a Type D bufferyard, including a 50-foot building setback and a 40-foot-wide landscape yard, to be planted with 160 plant units per 100 linear feet of property line. The alternative design solution consists of a planted landscape yard with a varied width from 15 to 25 feet, with an additional two plant units, and a 6-foot-high, sight-tight fence along the property line, for which a detail needs to be provided. In order to contribute to an effective bufferyard from the adjacent residential property, the applicant should substitute 24 of the proposed shrubs along the eastern property line with 8 evergreen trees and provide larger caliper shade trees. This will add an additional 16 plant units, for a total of 130, an increase of 16 percent over normal requirements.

The Alternative Compliance Committee finds the applicant's proposal equally effective as normal compliance with Section 4.7, if approved with conditions set forth in the Recommendation section of this report. These conditions will require larger shade trees and 16 percent more plant units than what is normally required in accordance with the requirements of Section 4.7, creating an equally effective bufferyard....

(Exhibit 19, pp. 5-7 of Backup) The recommended conditions are addressed below.

(23) The Historic Preservation Section submitted a comment which noted that “[a] search of current and historic photographs, topographic and historic maps, and locations of currently known archeological sites indicates the probability of archeological sites within the subject property is low” and it therefore “recommends approval ... with no conditions.” (Exhibit 19, p.12 of Backup)

(24) The Environmental Planning Section recommended approval of the Application, reasoning as follows:

The site has a Natural Resource Inventory Equivalency Letter (NRI-138-2018) and Woodland Conservation Exemption Letter (S-121-2018).... The site is primarily developed with one structure, and paved parking areas. There are small maintained grass areas and scattered trees and shrubs throughout the project area. No woodland or regulated environmental features are located on this site.... No unsafe soils containing Christiana complexes or Marlboro clays are associated with this site. This site is not located within a Sensitive Species Protection Review Area (SSPRA) based on a review of the SSPRA GIS layer prepared by the Maryland Department of National Resources.... The Site is located within the environmental Strategy Area 1 (formerly the Developed Tier) of the Regulated Environmental Protection Areas Map as designated by *Plan Prince George's 2035 Approved General Plan* (2014). No Countywide Green Infrastructure Areas are located on-site per the *Approved Prince George's Resource Conservation Plan* (May 2017). Marlboro Pike is adjacent to the site and is designated as a historic roadway. This historic roadway will be required to have a landscaped buffer which will be addressed by the Urban Design Section.

The Environmental Planning Section finds this application to be in conformance with the environmental requirements of Subtitle 25 Woodland and Wildlife Habitat Conservation Ordinance ... and Subtitle 27 Zoning Ordinance....

The site recently received approval of Stormwater Management (SWM) Concept Plan #41955-2018-00, which is in conformance with the current code.... The approved concept plan is consistent with the special exception plan....

The Environmental Planning Section Recommends approval of SE-4822....

(Exhibit 19, p. 19 of Backup)

(25) The Transportation Planning provided the following comment in its review of the Application:

The proposed food or beverage store in combination with a gas station is a permitted use in the C-S-C Zone subject to the approval of a special exception. The special exception ... is reviewed for compliance with general special exception requirements, including the determination that the use will not be detrimental to the health, safety, and welfare of residents and workers in the area.... There are no transportation -related findings required beyond the general special exception finding.

The subject property is located within an area whose development policies are governed by the 2009 *Approved Marlboro Pike Master Plan and Sectional Map Amendment* as well as the *Approved Countywide Master Plan of Transportation*. These plans recommend Walker Mill Road be upgraded to a 4-lane collector road (C-427) within an 80-foot right-of-way. Similarly, Marlboro Pike has been recommended to be widened to a collector road (C-410) within a right-of-way of 80-100 feet. The application indicates the location of the ultimate master plan footprint, and no permanent structures are being proposed within that footprint....

[A]n additional 12 new trips will be generated during both peak hours if this special exception application is approved. The unsignalized intersection of Marlboro Pike and Walker Mill Road is the closest intersection to the subject property. Based on a turning movement count taken on June 4, 2019, the intersection currently operates with a delay of 20.8 seconds during the AM peak hour and 34.9 seconds during the PM peak hour. Both results are well within the Planning Board's 50-second threshold of acceptability for unsignalized intersections. It is the opinion of staff that the additional 12 trips during either peak hour will not have a significant negative impact on the health, safety and general welfare of the community.

Circulation within the site will be acceptable for cars and minivans; the most dominant vehicle types to visit the site. Where larger vehicles such as tractor-trailers are concerned, there seem to be very little room to maneuver. It is strongly recommended that were feasible, these larger vehicles that are generally used for stock replenishment, should be used after hours, to minimize interactions with other vehicles using the site....

(Exhibit 19, Backup pp. 8-9)

(26) The Technical Staff recommended approval with conditions, reasoning as follows:

A food and beverage store in combination with a gas station may be permitted within the C-S-C Zone by special exception, if the applicant can show a reasonable need for the use in the neighborhood. In support of this finding, the applicant has submitted a market analysis... prepared by Laverna Olkowski, Sr. Real Estate Representative, 7-Eleven, Inc.

The needs analysis states ...[i]t is reasonable to assume that 7-Eleven ... will continue to select new locations that have the ability to include both gas and convenience store offerings. As part of the rationale for this specific location in District Heights, the connectivity and free flow of the site provide an excellent opportunity to offer gasoline and fresh food offerings to their customers and other shoppers in a safe, convenient location that meets current land development requirements....

Staff agrees with the applicant, that where the colocation of gas facilities with a food or beverage store is proposed, the necessity or demand of the gas station creates a reasonable need for a food or beverage store, which will provide convenience and expedient service to the community....

The proposed 2,993-square-foot food and beverage store will be an appropriate size for the site and conforms to the regulations applicable in the C-S-C Zone. The size and location of the building, as well as access points to the food and beverage store, are oriented toward meeting the needs of the neighborhood...

Staff notes that there are five similar uses located within the subject site's trade area. As shown within the gas station analysis of this report, staff believes that development of the site will not unduly restrict the availability of land or upset the balance of land use in the area, based upon the market analysis , which demonstrates a conservative demand for this proposed use....

The applicant's SOJ states that alcoholic beverages will not be sold within the proposed food and beverage store. Staff recommends that a note be placed on the plan prohibiting the sale of alcoholic beverages on the site....

Staff finds that the proposed gas station is necessary to the public, given the unmet demand as shown within the market analysis... prepared by Laverna Olkowski Sr. Real Estate Representative, 7-Eleven, Inc., and the needs analysis prepared by Valbridge Property Advisors....

In addition, there is no indication that the approval of the proposed gas station would upset the balance of land use in the area, nor would the use unduly restrict the availability of land in the area for other commercial uses....

A special exception use is considered compatible with uses permitted by-right within the Commercial Shopping Center Zone, as long as specific special exception criteria are met. Unless unique adverse impacts are identified, the special exception may be approved. The appropriate standard for determining whether the use would create an adverse impact upon surrounding properties to show that the proposed use, at this particular location proposed, would not have adverse impacts above and beyond those inherently associated with the special exception use, regardless of its location within the zone.

Based on the applicant's revised statement of justification ..., the analysis contained in this technical staff report and associated referrals, and materials in the record, the applicant has demonstrated conformance to the required special exception findings, as set forth in Section 27-317 (in general); Section 27-355, Food or beverage store; and Section 27-358, Gas station, of the Zoning Ordinance; and conformance to the 2010 *Prince George's County Landscape Manual*.... Therefore, staff recommends APPROVAL ... subject to [conditions]....

(Exhibit 19, pp. 7-9, 15 and 18-19)

(27) The Planning Board approved the accompanying application for a Departure from Parking and Loading Standards (DPLS-462). (Exhibit 20(a)) The District Council subsequently reviewed and affirmed the Planning Board's decision. (Exhibit 20(b))

(28) The Maryland Department of Transportation-State Highway Administration Access Management Section noted "no comments or objections" since "Marlboro Pike and Walker Mill [Road] are County owned and maintained roadways." (Exhibit 19, p. 40 of Backup)

### **APPLICABLE LAW**

(1) A Gasoline Station and a Food or Beverage Store are permitted in the C-S-C Zone upon approval of a Special Exception. In order to receive special exception approval, the Applicant must satisfy the provisions of Sections 27-317, 27-355 and 27-358 of the Prince George's County Zoning Ordinance.

(2) 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.

(3) Section 27-355 provides as follows:

Sec. 27-355. - Food or beverage store.

(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.

(4) Section 27-358 provides as follows:

Sec. 27-358. - Gas station.

(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.
- (5) The request must also satisfy the purposes of the commercial zones, in general, and the C-S-C Zone found in the following sections of the Zoning Ordinance:

Sec. 27-446. - General purposes of Commercial Zones.

- (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.

Sec. 27-454. - C-S-C Zone (Commercial Shopping Center).

(a) **Purposes.**

- (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/Need**

(6) 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)) Webster’s New World Dictionary (2<sup>nd</sup> College Edition) defines necessary as “essential” and “indispensable”. In Brandywine Enterprises, Inc. v. County Council, 117 Md. App. 525, 540 (1997), the Court of Special Appeals addressed the definition of “necessary” in the County’s Zoning Ordinance as it relates to rubble fills and noted that “‘necessary’... means necessary rather than reasonably convenient or useful.” The Court went on to note that the best method for determining need for a rubble fill would be to assess whether there would be an actual deficit of capacity. In a case involving liquor licenses, 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.” The District Council has determined that the proper standard to apply in the review of the instant request is whether the Gas Station will be “convenient, useful, appropriate”, etc., given the nature of the use.

(7) I believe these holdings would also apply to the requirements in Section 27-355(a)(1) concerning Food or Beverage Stores since “need” has been similarly defined. See, Lucky Stores, Inc. v. Board of Appeals, 270 Md. 513, 517, 32 A. 2d 758, 766 (1973), citing Neuman v. Mayor & Council of Baltimore, 251 Md. 92, 246 A. 2d 583

(1968) (“Need ... must be considered as elastic and necessary ... [and] does not mean absolute necessity....”)

### **Special Exceptions**

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

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

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

### **CONCLUSIONS OF LAW**

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. The instant Application satisfies 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 use is one that serves the needs of all County residents that rely on the automobile as a means of transportation. Applicant will also be providing much needed stormwater management that currently does not exist on site. Accordingly, this purpose is met.

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

The 2014 General Plan placed the property within the Established Communities. This proposal furthers the General Plan’s vision of context sensitive infill development. The Sector Plan made recommendations promoted the redevelopment of Marlboro Pike and the requested uses will bring additional landscaping, fencing, an architecturally compatible convenience store, safe lighting, and additional sidewalks to the area. Finally, the expanded rights-of-way for Marlboro Pike and Walker Mill Road ar provided

on the Special Exception Site Plan, as recommended in the Countywide Master Plan of Transportation. Accordingly, this purpose is satisfied.

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

Redevelopment of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since there will be few additional vehicular trips and no other public facility is impacted by the uses.

*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 and Food or Beverage Store are to be developed in accordance with all applicable laws concerning setbacks, the alternative compliance provides sufficient screening and buffering, and the lighting plan will not impact adjacent uses. 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 uses ensure that a certain number of jobs will be provided and that taxes will be paid into the County's coffers.

*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*

As discussed by the Transportation Section, the uses will bring a relatively small number of additional trips to the site. The reduction of entrances into the site and the relocation of the Marlboro Pike entrance further away from the intersection should also lessen the danger and congestion of traffic in that area.

The purposes of the commercial zones found in Sections 27-446 and 454 are also met since the two uses provide convenience to the residents and businesses in the area; there will be sufficient buffering and screening to lessen any impact upon adjacent uses; the uses meet the intent of the General and Sector Plans (as discussed above); and, the new uses are more compatible with the other commercial uses at the neighboring intersection and are compatible with general retail uses.

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

(2) The uses satisfy all applicable provisions of the Zoning Ordinance once alternative compliance and the DPLS are granted. The latter has been approved by the Planning Board and the District Council. AC-19007 can be approved since additional

plant units and a six-foot-tall sight tight fence will be provided along the eastern property line near the residential use in lieu of providing the minimum setbacks, and the interior landscaping for the parking lot will only be 92 square feet smaller in size and one shade tree less – proposals equally effective as normal compliance once conditions noted below are satisfied. (Section 27-317 (a)(2))

(3) Again, the use conforms to the General Plan's vision of context sensitive infill development and the Sector Plan's wish for development along Marlboro Pike. (Section 27-317(a)(3))

(4) The uses will be developed in a context sensitive manner; will provide up to date stormwater management; will decrease the entrances from the two roadways; and will provide convenience to the traveling public and residents/workers in the area. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area, nor be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4) and 27-317(a)(5))

(5) The proposal is exempt from the provisions of the Woodland and Wildlife Habitat Conservation Ordinance, as discussed *supra*. (Section 27-317(a)(6))

(6) There are no regulated environmental features present on the site. (Section 27-317 (a)(7))

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

### **Food or Beverage Store**

(8) Applicants have submitted sufficient evidence to satisfy the provisions of Section 27-355. There is a reasonable need for the store (when defined as reasonably convenient) , per 7-Eleven's vast experience with this type of store alone and in combination with Gas Stations, and the traffic counts/population in the area.(Section 27-355(a)(1)) The store will be of a size that can provide some fresh food offerings for the workers/residents in the area as they travel, and is designed in a manner to ensure safe access and minimal impact on nearby residences. (Section 27-355(a)(2)) The use is one compatible with the requested Gas Station and the other commercial uses nearby, and will not restrict the availability of land nor upset the balance of land for other permitted uses in the area. (Section 27-355(a)(3)) The use is not in the I-1 or I-2 Zones and there will not be any retail sales of alcoholic beverages. (Sections 27-355 (a)(4) and (5))

**Gas Station**

(9) The Application also satisfies Section 27-358 once all conditions are met. The property has approximately 132 feet of frontage on Walker Mill Road and 212 feet of frontage along Marlboro Pike, both streets with a right-of-way width of at least 70 feet. (Section 27-358(a)(1))

(10) Applicants witness noted that there are no schools, outdoor playgrounds, libraries or hospitals within 300 feet of the subject property and the closest such use ( a playground) is nearly 575 feet away. (Section 27-358(a)(2))

(11) The Site Plan notes that there will not be any display or rental of cargo trailers, trucks or similar uses; and the storage/junking of wrecked motor vehicles is prohibited. (Section 27-358(a)(3) and (4))

(12) The Site Plan indicates that each of the access driveways will be at least 35.2 inches wide; the edges of the driveways are 55 feet from the side lot line facing Marlboro Pike and 34 feet from the side lot line of the abutting single-family home on Walker Mill Road; the driveway along Marlboro Pike begins approximately 110 feet east of the point of curvature of the intersection and the one along Walker Mill Road begins approximately 120 feet north of the point of curvature of the intersection; and the driveways are defined by curbing. (Sections 27-358(a)(5) and (6))

(13) There are sidewalks 5 feet in width along Marlboro Pike and Walker Mill Road. (Section 27-358(a)(7))

(14) The gasoline pumps dimensions will be added to the Site Plan, and they are at least 25 feet behind the street lines sine the canopy which hangs over them are at least 32.67 feet from the closest street line. (Section 27-358(a)(8))

(15) No repair services are proposed and Note 10 on Exhibit 15 (c) will be deleted to avoid confusion. (Section 27-358 (a)(9))

(16) The details on architectural elements indicate that the proposed structures will be compatible with the commercial character of the surrounding neighborhood. (Section 27-358(a)(10))

(17) The Site Plan indicates the topography of the property and abutting lots. (27-358 (b)(1)). The Site Plan indicates the location of the trash enclosures and a condition requires Applicants to submit a detail for the enclosures. No exterior vending machines or vending area are proposed. (Section 27-358 (b)(2) and (3))

(18) Applicants will add a note explaining what must be done upon the abandonment of the Gas Station. (Section 27-358(c))

(19) Applicants provided sufficient evidence to show that the Gas Station is necessary to the public in the surrounding area, in that it is reasonably convenient and useful, and the population estimate indicates sufficient population density/and vehicular travel within the one-mile radius market area to support this reasonably modest-sized Gas Station. Moreover, there is an estimated total demand for at least 29.9 million gallons of gasoline, per Applicants independent needs assessment, and an unmet demand of approximately 4 million gallons – further indicia that the Gas Station is necessary. For these same reasons the Gas Station will not upset the balance of land use in the area for other trades and commercial uses, since other businesses in the area are thriving. (Section 27-358(d))

### **Alternative Compliance**

(20) AC-19007 may be approved since: (1) the size of the site and the proposed parking lot cannot easily accommodate the 699-square-foot landscape area required in the 2010 Landscape Manual nor the 3 plant units, but Applicants proposal of two larger caliper shade trees and 607-square foot landscape area is equally effective; and (2) Applicants will be installing a 6-foot-high sight-tight fence and additional plant units along the eastern property line adjacent to the single-family detached dwelling.

## **DISPOSITION**

Special Exception 4822 and AC–19007 are Approved, subject to the following conditions:

1. Prior to certification of the Special Exception, the Special Exception Site and Landscape Plan (Exhibit 15) shall be revised, as follows:
  - a. Provide a 4-foot-wide sidewalk or designated pedestrian route from Marlboro Pike to the building entrance.
  - b. Move all shade trees provided per the Section 4.2 requirements of the 2010 Prince George’s County Landscape Manual out of the right-of-way and onto the subject property within the 10-foot-wide landscape strip.
  - c. Remove the Section 4.2 schedule and demonstrate conformance to Section 4.6 of the 2010 Prince George’s County Landscape Manual, along the subject property’s entire frontage on Marlboro Pike, a designated historic road.

- d. Revise the Section 4.7 schedule, along the southern property line, to reflect that no bufferyard is required.
  - e. Place a note on the site plan prohibiting the sale of alcoholic beverages on the site.
  - f. Place a note on the plan necessitating the termination of the special exception and removal of all structures exclusively used in the business (including underground storage tanks), except buildings, upon the abandonment of the gas station.
  - g. Place a note on the site plan stating that illumination of the signs conforms to Section 27-592 of the Prince George's County Zoning Ordinance.
  - h. Provide a detail of the trash enclosure, demonstrating conformance to Section 4.4 of the 2010 Prince George's County Landscape Manual, utilizing the same building materials proposed for the Food or Beverage Store.
  - i. Demonstrate conformance with the sign setback requirements of Section 27-614 of the Prince George's County Zoning Ordinance for the freestanding pylon sign.
  - j. Increase the caliper of the proposed shade trees in the Section 4.3 interior planting area and the Section 4.7 eastern bufferyard to 3.5- to 4-inch caliper.
  - k. Replace 24 of the proposed shrubs with 8 evergreen trees along the eastern boundary.
  - l. Clearly show the proposed trees and labels that are blocked by the building graphics.
  - m. Provide a detail of the proposed sight-tight fence.
  - n. Delete references to "fuel station property" within the Notes and insert "special exception property", and delete Note 10.
  - o. Add the setback dimensions of the gasoline pumps from the street lines.
  - p. Include the Departure from Parking and Loading Standards approval information DPLS under Note 5C.
2. Submit the revised Special Exception Site and Landscape Plan to the Office of the Zoning Hearing Examiner for review, approval and inclusion in the record prior to the issuance of any permits.