

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

**APPLICATION TO AUTHORIZE THE ISSUANCE OF
A BUILDING PERMIT IN CONJUNCTION WITH SPECIAL EXCEPTION**

DECISION

Request: Authorization to Issue Building Permit for a Structure within a Proposed Right-of-Way
Applicant: SMO, Inc.
Opposition: None
Hearing Date: June 15, 2016
Examiner: Maurene Epps McNeil
Recommendation: Approval with Conditions

NATURE OF REQUEST

(1) The subject request is by an existing Gas station for authorization to build within the proposed right-of-way for Allentown Road due to the reconfiguration of the existing pump islands and the enlargement of a canopy. Applicant has also filed a request for and administrative revision to a special exception site plan, ROSP-997-05, that has been approved by the Planning Director (discussed below)

(2) The subject property is located on the northeast side of Allentown Road at its intersection with Webster Lane and is identified as 7501 Allentown Road, Ft. Washington, Maryland.

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

(4) At the close of the hearing the record was left open to allow Applicant to submit some additional information. The last of the items was provided on June 23, 2016 and the record was closed at that time.

FINDINGS OF FACT

(1) The subject property is approximately 0.86 acre in size. The property is improved with a Gas Station, two pump islands with eight fueling stations, canopy and 493 square foot store. It is surrounded to the north and northeast by single-family homes, and to the southeast and southwest by retail commercial uses.

(2) The Gas Station was constructed on the site pursuant to the District Council's approval of SE-997 in 1964. (T.22) The Applicant acquired the property in 2001. Several variances were subsequently approved by the Board of Appeals. Other revisions were approved by the Planning Board and/or the District Council.

(3) The Applicant has requested limited minor changes to the Special Exception site plan to reconfigure the existing fuel pumps and islands by spreading them out further, and replacing the existing canopy with a larger one. See ROSP-997-05; (T.6) No additional gross floor area is proposed. (T.15)

(4) As part of its renovation efforts, Applicant will place the new canopy in the same area of the site as the existing canopy. It will be wider but will not protrude any further than the existing canopy into the Master Planned right-of-way for Allentown Road. (T.12)

(5) Mr. Steve Stookey, manages the engineering department for the Applicant and its holding company, the Wills Group. He stated that the Applicant wishes to renovate and update its service station to be more competitive with modern gas stations. He further stated that the properties would not continue to yield a reasonable return if the application were denied. (T.20)

(6) Mark Ferguson, accepted as an expert in the area of land use planning, explained that the Gas Station was constructed at a time when Allentown Road had a narrower planned right-of-way. In 2006, the Henson Creek Master Plan upgraded Allentown Road to a major collector and, for a variety of reasons, increased the right-of-way near the subject property, solely on the northern side (the side of the subject property) from 90-100 feet. (T. 27) The witness also noted that the Master Plan stressed that, within the Developing Tier (now referred to as the Established Communities), there is the challenge of "[i]mproving the appearance and function of commercial areas." (2006 Master Plan and SMA for Henson Creek-South Potomac p.22)

(7) Applicant submitted photographs of the present conditions on site, obtained from Google Maps. (Exhibits 16(a) – (f))

(8) As noted above, Applicant does intend to keep the new canopy and two pump islands within the same area of the planned right-of-way as two of the existing pumps and a portion of the existing canopy. (Exhibit 11(c);T.11-13) It objects to a condition that it remove the canopy if the removal or alteration is required by the applicable government agency at the time of the widening of Allentown Road.

Agency Comment

(9) The State Highway Administration (“SHA”) shared that it had no objection to the approval of the revision to the special exception. It noted that access to the property is from a County Road and its jurisdiction ends at MD 5; however, “[s]hould Prince George’s County require any off-site improvements to a state road, an access permit will be required from this office.” (Exhibit 10)

(10) The minor changes to the canopy and reconfiguration of the pump islands requested in ROSP-997-05 were administratively approved by the Planning Director. (Exhibit 15(b)) In her approval, the Planning Director noted that the instant request was pending.

APPLICABLE LAW

(1) Pursuant to Section 27-259 of the Zoning Ordinance, (the District Council must authorize the instant request. This Section provides, in pertinent part, as follows:

Sec. 27-259. - Permits within proposed rights-of-way.

(a) **Authorization.**

(1) With the exception of an arena (stadium) proposed to be constructed on land leased or purchased from a public agency, no building or sign permit (except as provided in Part 12 of this Subtitle) may generally be issued for any structure on land located within the right-of-way or acquisition lines of a proposed street, rapid transit route, or rapid transit facility, or proposed relocation or widening of an existing street, rapid transit route, or rapid transit facility, as shown on a Master Plan; however, the Council may authorize the issuance of the building or sign permit in accordance with this Section. For the purposes of this Section, "Master Plan" means the General Plan, the Functional Master Plan of Transportation, or any Adopted and Approved Area Master Plan or, if not yet approved, any such Master Plan adopted by the Planning Board, unless the Plan has been rejected by the Council.

(2) Notwithstanding the definition of a "street" (Section 27-107.01), building permits may be issued without such Council authorization for any structures on:

(A) Land which:

- (i) Was in reservation but is now not in reservation; and
- (ii) Has not been acquired and is not being acquired.

(B) Land which was subdivided after the adoption of a Functional Master Plan of Transportation, Area Master Plan, or the General Plan, but was not reserved or required to be dedicated for a street or rapid transit route or facility shown on the Plan.

(3) A permit may be issued without such Council authorization for the replacement of a legally erected sign if the replacement sign is otherwise in conformance with this Subtitle, is not an intensification of signage for the subject property, and if the proposed transportation facility is not fully funded for construction in the adopted County Capital Improvement Program or the current State Consolidated Transportation Program.

(b) **Application.**

(1) Where a Special Exception, Detailed Site Plan, Specific Design Plan, or Departure is pending, or where application for issuance of a permit has been made and recommended for denial pursuant to Sections 27-254 and 27-255 of this Subtitle, the owner of the land may make a written request to the District Council to authorize the issuance of the permit. In the latter case, the recommendation for denial of the permit shall not have been based on any failure of the applicant to comply with any requirement of this Subtitle (other than Subsection (a) of this Section), Subtitle 24, the Regional District Act, or any condition placed on the property in a zoning case or subdivision plat approval. The request shall be in writing and shall be filed with the Clerk of the Council within thirty (30) days after notice of the denial is given.

(2) Along with the application, the owner shall submit the following:

(A) A statement listing the names and the business and residential addresses of all individuals having at least a five percent (5%) financial interest in the subject property;

(B) If any owner is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. The same statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors;

(C) If the owner is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds);

(3) For the purposes of (A), (B), and (C), above, the term "owner" shall include not only the owner of record, but also any contract purchaser.

* * * * *

(g) **Criteria for approval.**

(1) The District Council shall only approve the request if it finds that:

(A) The entire property cannot yield a reasonable return to the owner unless the permit is granted;

(B) Reasonable justice and equity are served by issuing the permit;

(C) The interest of the County is balanced with the interests of the property owner; and

(D) The integrity of the Functional Master Plan of Transportation, General Plan, and Area Master Plan is preserved.

(h) **Conditions placed on approval.**

(1) If the Council authorizes the issuance of the permit, it shall specify the exact location, ground area, height, extent, and character of the structure to be allowed. The Council may also impose reasonable conditions which benefit the County.

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CONCLUSIONS OF LAW

- (1) The property was required to go through the minor amendment of a special exception approval process in order to replace the canopy and reconfigure the pump islands. (Section 27-259(b)(1))
- (2) The existing canopy and two pump islands are already within the planned right-of-way of the Allentown Road, because the road was planned for expansion after the use was operating on the site. Applicant will not yield a reasonable return on the use if forced to remove the canopy and two pumps, since there is no alternative location for them on this small corner lot. (Section 27-259(g)(1)(A))
- (3) Reasonable justice and equity will be served by allowing Applicant to operate its gas station within the right-of-way, especially since there is no time table as to when (or if) planned expansion of Allentown Road will occur. (Section 27-259(g)(1)(B))
- (4) Approval of the Application will balance Applicant and the County's interests – Applicant will be able to legally conduct its business and the County will not be faced with a vacant lot and possible eyesore. (Section 27-259(g)(1)(C))
- (5) The integrity of the applicable Plans will be preserved since they recognized a commercial use of the site; and the need to improve the appearance and function of said commercial use. (Section 27-259(g)(1)(D))

RECOMMENDATION

- (1) It is the recommendation of this Examiner that the Applicant be allowed to operate the gas station as approved in the companion case, RO SP-997-05, subject to the condition that any new improvements constructed within the right-of-way be removed or altered if removal or alteration is required. This condition is usually imposed in these types of cases and is one that benefits the County. (Section 27-259(h))
- (2) The dimensions and location of that portion of the gas station structures within the proposed right of way will be as shown on Exhibits 11(a)-(e). Applicant should be required to add a Note to the Special Exception Site Plan approved in RO SP-997-05 to reflect the condition in paragraph No. 1, above, and a signed copy of the revised Site Plan should be included in the record of the instant Application prior to the issuance of permits.