

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

**RECONSIDERATION**

**SPECIAL EXCEPTION**

**4775**

**VARIANCE**

**4775**

**DECISION**

Application:	Hotel in the M-U-TC Zone
Applicant:	Calvert Tract Parcel 6A, LLC/ t/a Hotel at Cafritz Property at Riverdale Park
Opposition:	None
Original Hearing Date:	April 27, 2016
Reconsideration Hearing Date:	July 25, 2016
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

**NATURE OF REQUEST**

(1) Special Exception 4775 is a request for permission to use approximately 0.87 acre of land in the M-U-TC (Mixed Use Town Center) Zone for a Hotel. Variance 4775 is a request to waive the requirements that the site have frontage on, and direct vehicular access to, a street with a right-of-way width of at least 70 feet, and the requirement that the use be located in an area which is, or is to be, developed with a concentration of industrial or office uses. The subject property is located at the southwest corner of the future intersection of Van Buren Street and Rhode Island Avenue, Riverdale Park, Maryland, and identified as the western half of Parcel F.

(2) The Technical Staff recommended approval with conditions. (Exhibit 14) The Planning Board chose not to hold a hearing and adopted Staff's recommendation as its own. (Exhibit 15 (b))

(3) No one appeared in opposition to the instant request at the original hearing held by this Examiner.

(4) At the conclusion of the original hearing the record was left open for additional submissions. The last of these was received on May 18, 2016, and the record was closed at that time.

(5) On June 27, 2016 this Examiner issued her decision approving both requests, with conditions. (Reconsideration Exhibit 5) Applicant timely filed a request for reconsideration of Condition 3, pursuant to Section 27-327 of the Zoning Ordinance. (Reconsideration Exhibit 1) A reconsideration hearing was held on July 25, 2016, and no one appeared in opposition at this hearing.

(6) Shortly after the conclusion of the reconsideration hearing the Applicant notified this Examiner that certain changes needed to be made to the Special Exception Site Plan, and asked that the record be left open to allow it to submit the revised Site Plan and allow Staff to provide written comment. The last of these items was submitted on October 27, 2016 and the record was closed at that time.

(7) This Decision incorporates all of the evidence and testimony in SE/VSE 4775.

## **FINDINGS OF FACT**

### **Subject Property**

(1) The requested 125,000 square foot hotel<sup>1</sup> is to be developed in Building 6A on Parcel F as shown on the Development Plan entitled Cafritz Property at Riverdale Park, based on the Approved Town of Riverdale Park Mixed-Use Town Center Zone Development Plan (approved by the District Council upon its adopted of Zoning Ordinance 11-2012 for Zoning Map Amendment A-10018). The entire mixed use development is also known as Riverdale Park Station. The subject property is approximately 0.887 acre in size and is located on the south side of the new Van Buren Street, approximately 800 feet east of its intersection with Baltimore Avenue (US Route 1). It is cleared and graded.

(2) The subject property is not exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance and there is an approved Type 2 Tree Conservation Plan (TCP 2010-132-02) approved for the Cafritz Property. Staff noted that “[t]he proposed hotel is located within an area previously approved to be cleared and is in conformance with the existing TCP2.” (Exhibit 14, p. 9).

(3) There will be no impact to any regulated environmental features. (Exhibit 26 (a)) There is an approved Stormwater Management Concept Plan for the site. (Exhibit (26) (b)) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone.

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<sup>1</sup> The initial request noted there would be 87,407 square feet; however, it inadvertently left out the underground parking area. (T. 50)

## Neighborhood/Surrounding Uses

- (4) The property is surrounded by the following uses:
- North – Across Van Buren Street, proposed Building 5 (231 multifamily units, 5,300 square feet retail commercial and 10,000 square feet of office commercial) in the M-U-TC Zone
  - South – A U.S. Postal Service processing facility in the R-55 Zone
  - East – Proposed Building 63 (76 multifamily units) in the M-U-TC Zone
  - West – Building 3 (51,396 square feet of retail commercial and 10,000 square feet of office commercial) in the M-U-TC Zone
- (5) The Neighborhood is defined by the following boundaries:
- North – Albion Road
  - South – Tuckerman Street
  - East – CSX Railroad Tracks
  - West – Baltimore Avenue (US Route 1)

## Zoning History

(6) Staff provided a detailed history of the zoning approvals for the subject property. (Exhibit 14, pp. 4-5) Development of the subject property is governed by the 2009 Approved Countywide Master Plan of Transportation; the 2004 Approved Town of Riverdale Park Mixed-Use Town Center Zone Development Plan; Zoning Ordinance 11-2012; and the 2012 Cafritz Property at Riverdale Park Design Guidelines. (Exhibits 19, 22, 23 and 24).

(7) The 2014 General Plan, *Plan Prince George's 2035*, placed the subject property, within the Established Communities and on its Growth Policy Map within the Riverdale MARC Local Center, defined as “focal points of concentrated residential development and limited commercial activity serving our Established Communities.” (2014 General Map, pp. 106-107) The Generalized Future Land Use Map in the General Plan designated the area for mixed-use, defined as:

Areas of various residential, commercial, employment and institutional uses. Residential uses may include a range of unit types. Mixed-use areas may vary with respect to their dominant land use, i.e., commercial uses may dominate in one mixed-use area, whereas residential uses may dominate in another.

(2014 General Plan, pp. 100-101)

(8) The property was placed within the M-U-TC Zone upon the District Council's adoption of Zoning Ordinance 11-2012. In its approval of the subsequent Detailed Site Plan for the Cafritz property (DSP-13009), the District Council noted the need for all development to satisfy the M-U-TC Guidelines Compliance Matrix (the “Matrix”):

The M-U-TC Guidelines Compliance Matrix (“Matrix”) ... shall serve as the instrument to guide the revisions to the plans at either time of certification or prior to building permit, as determined by the Urban Design Section .....

(Exhibit 23, p. 35)

(9) The Town of Riverdale Park Mixed-Use Town Center Zone Development Plan requires Detailed Site Plan approval “concurrently with or after the approval of a special exception, for all new development and redevelopment on the property....” (Exhibit 14, p. 61) The District Council permitted signage and landscaping for Parcel F (which includes the subject property) to be addressed in the Detailed Site Plan. (Exhibit 14, pp. 74-82 and Exhibit 23, p. 36)

### **Applicant’s Proposal**

(10) The subject property is identified as approximately 0.87 acre of the 1.75 acre Parcel F on the Cafritz Property Development Plan. (Exhibits 20, 36(a)-(b)) The remainder of Parcel F will be developed as multi-family residential housing. Applicant intends to construct a 125,000 square-foot hotel with 120 rooms, fitness center, indoor pool, business center, guest shop, guest kitchen area, and a 71-seat restaurant and bar open to the general public. (Exhibit 14, p. 7; T. 28-30) The restaurant is not considered accessory to the hotel since the Development Plan allows it as a permitted use with a hotel. However, the other uses are considered accessory.

(11) The entry to the hotel will be from the middle of Van Buren Street or from the parking area in the back. (T.29) The Van Buren entry will be covered by a canopy. Guest rooms will be located on floors 2 through 5, with larger suites on the top floor. Applicant will provide a green roof in accordance with its storm water concept approval.

(12) The site will be constructed in compliance with Zoning Ordinance No. 11-2012, the Secondary Amendment thereto (SA -130001), and the Guidelines Matrix. (Exhibits 19 and 21)

(13) The landscaping and hardscape plans for the internal boundaries of the subject property are provided in Exhibits 20(g) and (h). All external landscaping was approved as part of the Detailed Site Plan approval.

### **Variance**

(14) Sections 27-365 (a)(1) and (2) of the Zoning Ordinance mandate that the requested use be located in an area which is, or is to be, developed with a concentration of industrial or office uses, and shall have frontage on, and direct vehicular access to, a street with a right-of-way width of at least 70 feet. Accordingly, Applicant is requesting a variance to these provisions of the Zoning Ordinance.

(15) Applicant provided the following justification in support of this request:

1. **Section 27-365(a)(1) – “The proposed use shall be located in an area which is or is to be developed with a concentration of industrial or office uses:**

Compliance with Section 27-230:

**(a)(1) “A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions.”**

**RESPONSE:** The Development Plan, as referenced above, was approved by the District Council, and within that Plan, a hotel was shown to be located upon the Subject Property. By doing so, the Council clearly indicated its belief that a hotel would be appropriate at this location, subject to the approval of a special exception application, as required by the Zoning Ordinance. The Cafritz Property is a mixed-use community, approved to include approximately 165,000 square feet of retail commercial uses, 22,600 square feet of office uses, 119 townhomes, 855 multifamily units, and the proposed 120-room hotel. While this community arguably cannot be characterized as one which includes “a concentration of office or industrial uses,” the inclusion of the hotel upon the Subject Property within the Development Plan approved by the District Council represents an extraordinary situation that would justify approval of the requested variance.

It is also significant that a bridge is proposed to be constructed over the CSX tracks for this development, and this bridge will provide easy vehicular/pedestrian/bike access to the University of Maryland’s M-Square Research Park, which, at full build-out, will encompass approximately 2,000,000 square feet, and employ approximately 6,500 people. While the hotel may not be located “in” an area with a concentration of office or industrial uses, I submit that the proximity of this major office park, and the ease of access to the proposed hotel from this office park, serves to further justify the requested variance.

**(a)(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;**

**RESPONSE:** The location of the hotel as proposed upon the Subject Property is an integral element of the Cafritz Property mixed-use community, which, as indicated above, was approved (subject to special exception approval) by the District Council. The condition from which this variance is requested was adopted at a time when hotels were rarely, if ever, located in proximity to residential areas, and before the concept of a mixed use community was conceived and accepted as a desirable lifestyle by citizens and governments alike. If this variance request is rejected, and the special exception for the proposed hotel is thus denied, a new use upon the Subject Property would need to be evaluated and approved by the District Council, and this would require revisions, amendments, reconsiderations and/or other actions for the Detailed Site Plan, Secondary Amendments, and other approvals that have already been received. These are certainly “peculiar and unusual practical difficulties” which justify the requested variance.

**(a)(3) “The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.”**

**RESPONSE:** Since the applicable Master Plan for the Cafritz Property is the Development Plan for this property, as approved by the District Council through its approval of the M-U-TC zone for the Cafritz Property, and since the hotel upon the Subject Property is shown upon this plan, the requested variance will not substantially impair this Plan.

**2. Section 27-365 (a)(2) – “The proposed use shall have frontage on, and direct vehicular access to, a street with a right-of-way width of at least seventy (70 ) feet:”**

Compliance with Section 27-230:

**(a)(1) “A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions.”**

**RESPONSE:** Van Buren Street, upon which the proposed hotel will front, is proposed as a 61-foot right-of-way at this location. As discussed above, the proposed hotel upon the Subject Property was approved by the District Council as part of the Development Plan for the Cafritz Property at Riverdale Park. In its subsequent approval of the Preliminary Plan of Subdivision, as well as the Detailed Site Plan for this property, the District Council knowingly approved the location and width of Van Buren Street in front of the Subject Property as a 61-foot right-of-way. Since the hotel was approved upon the Subject Property along with the above-referenced right-of-way, the District Council knowingly and intentionally approved the location of the proposed hotel fronting on a street of less than a 70-foot right-of-way. This is clearly an extraordinary situation that would justify this requested variance.

**(a)(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;**

**RESPONSE:** Strict compliance with the Zoning Ordinance would require an increase in the right-of-way width of Van Buren Street to at least seventy (70) feet, which is not only an undue burden upon the owner, but also a rejection of the purpose of this right-of-way at this location. The 61-foot right-of-way width at this location was intentionally designed to promote a walkable, human-scale town center. Seventy (70) foot rights-of-way are more generally associated with suburban developments, while the Cafritz Property is intended as a more urban-style development.

Additionally, the justification of this criterion for the variance from Section 27-365(a)(1) will apply equally to the justification for satisfaction of this criterion for this requested variance.

**(a)(3) “The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.”**

**RESPONSE:** The justification for satisfaction of this criterion for the variance from Section 27- 365(a)(1) will apply equally to the justification for satisfaction of this criterion for this requested variance....

(Exhibit 14, pp. 41-44)

(16) Mr. Tim Davis, accepted as an expert in the area of landscape architecture, testified that the future hotel and its green roof were considered in the approved stormwater concept plan. (Exhibits 26(a)-(b); T. 58-59, 63-66) A revision was submitted to review the parking deck proposed to the rear of the hotel. (Exhibit 27)

(17) Mr. Mark Regulinski, project manager for the entire Cafritz Property Development, and accepted as an expert in the area of architecture, testified that the remainder of the Cafritz Property has been approved under an existing Detailed Site Plan that recognized that a Special Exception for a hotel would be considered in the future. Mr. Regulinski outlined the planned development for the hotel using various illustrative plans. Although all of Cafritz Property Development is governed by one Landscape Plan, as noted above, there will be additional landscaping on site. (Exhibits 20(g) and (h)). There will be a green roof provided for the site in keeping with the stormwater concept approval and the prior approvals for the entire Cafritz Property. (Exhibit 20(e); T. 41) A sign detail was provided. (Exhibit 20(j)) It will be approved in the review of the revised Detailed Site Plan. (T.44) A compliance Matrix was developed for ease of reviewing whether all of the requirements of the Development Plan were addressed.<sup>2</sup> (Exhibit 21)

(18) If approved the hotel will be connected to multifamily housing at some point in the future. The two buildings share a party wall to the east. (Exhibits 20(h) and (i); T. 42)

(19) Mark Ferguson, accepted as an expert in the area of land use planning, testified on Applicant's behalf and prepared a written land planning analysis, which provided detail on the various Plans that govern the instant Application. (Exhibit 29, pp. 4-13) The witness opined that the request satisfied all applicable provisions of the Zoning Ordinance (once the variance is approved and the Administrative Correction to the Design Guidelines made), reasoning as follows:

[A] development at the subject property is governed by the Town of Riverdale Park Mixed-Use Town Center Zone Development Plan, originally approved in January, 2004 and amended to include the Riverdale Park Station development in July, 2012, and further amended in October, 2013 by secondary amendment SA-130001.

As a general statement, the subject hotel is proposed in accordance with the contents of the Development Plan; specific conformance to its provisions is discussed below....

The area of subject property was mapped as a Network Gap in the Green Infrastructure Plan. During the approval of DSP-13009 and the associated TCP2-010-13, the woods

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<sup>2</sup> The Matrix notes, at No. 60, that the Special Exception Site Plan conforms with the requirement that car businesses shall store vehicles inside or to the rear with appropriate screening. The request does not include any "car business". I therefore reviewed this comment in the matrix as a typographical error.

which formerly existed on the property were approved to be cleared. There are no Regulated Areas or Evaluation Areas which will be affected by the subject project.

With regard to the Historic Sites and Districts Plan, no historic sites, resources or districts are located on the subject property. The University Park, Riverdale Park and Calvert Hills National Register Historic Districts surround the Riverdale Park Station development, but as the property is at some distance from the development's perimeter, the subject property lies from 750' to 900' from the various districts' boundaries, and is approximately 900' from the site of the former ERCO building (Site #68-022) which has since been demolished, development on the subject property will have very little visual impact on the surrounding districts and site. Nevertheless, a condition of approval was placed on the entire development to provide for Historic Preservation Commission review; this review was conducted on February 16, 2016, and approval of the subject application was voted with no conditions.

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 does not recommend any road facilities on or adjacent to the site of the subject application; the Rhode Island Avenue Trolley Trail, a segment of which is being constructed as a part of the Riverdale Park Station development, is located approximately 150' east of the subject property.

In conclusion, because the proposed hotel 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....

(Exhibit 29, pp. 11-12)

(20) Mr. Ferguson provided further testimony in support of the requested variances. The dedicated right-of-way at issue is only 58 feet (including a median strip) because the remaining 28 feet (containing ancillary streetscape) remained in private ownership partly as a compromise with the Town of Riverdale Park. Moreover, the design of the right-of-way, and the location of a hotel in this area (which includes residential and commercial uses) has already received the imprimatur of the local municipalities, the Planning Board and the District Council. (T. 74-76)

(21) Mr. Ferguson further opined that upon grant of the requested variances, the request would satisfy all applicable requirements of the Zoning ordinance and "would entail less adverse impact on the public health, safety, and welfare than those inherently associated with hotels irrespective of their location in the M-U-TC Zone." (Exhibit 29, p.21)

(22) Finally, Mr. Ferguson addressed a deviation from the requirement of the Cafritz Town Center Development Plan that the building be located 51-72 feet from the center line of the right-of-way. The building is actually 43.5 feet from the center line. Mr. Ferguson believed there was a typographical error in the Development Plan:

[I]n reviewing the compliance of the Special Exception Site Plan with the stipulations of table three there are a number of criteria laid out in table three, the width of the road bed, even though that's external to the Special Exception, I reviewed it and found that to be compliant; there's a criteria for the drive lane dimensions, that is in fact compliant; there are criteria for the streetscape dimension from the curb to the build-to line in which it's compliant, and each of those three components adds up to the distance from the center line to the building, as the building has to be on a build-to line by the second standard. And yet, somehow the standard in table three was constructed so that it could not be met if you comply to the other standards. So, specifically, table three at this location requires the building to be located between 51 and 72 feet from the center line of the right-of-way, and it is located, in fact, 43.5 feet.... So, it appears that there was a clerical error that was made in the construction of that table, most likely that that 51 to 72-foot dimension was carried down from the section of Van Buren Street ... immediately to the west of the hotel site where there is a public square that pushes the buildings slightly further apart....

(T. 83-85)

(23) Counsel for the Maryland-National Capital Park and Planning Commission and the Planning Director have agreed to administratively correct SA-13001 to address Table 3 of the Development Plan, reasoning as follows:

Based upon all of the above-stated facts, it must be concluded that the "Distance from Centerline to Building" dimension as shown on Table 3 of the Development Plan is not only mathematically inconsistent with the other applicable dimensions on that same Table, but is also inconsistent with the dimensions of the road section and the location of both the proposed hotel on the south side of Van Buren and the mixed-use building on the north side of Van Buren, as approved and shown upon Plan Sheets A011 and A015 of the certified DSP, as well as the Concept Plan approved with the rezoning of this property. For all of the above-stated reasons, the "Distance from Centerline to Building" column within Table 3 must be concluded to be erroneous, and this column should be eliminated from this Table. In doing so, there will be no change at all to the intent of the District Council relative to the "Proposed Roadbed and Streetscape Dimensions", or to the "Build-to-Line" standards generally – it will only help to clarify the dimensions and standards as intended.

(Exhibit 35, p.3)

## Reconsideration

(24) At the original hearing I agreed with this analysis, but believed that Applicant did not provide any legal basis to change the language in Table 3 of the Secondary Amendment to the Development Plan (SA130001) via an "administrative correction" and that Section 27-546.14, *infra*, provided the process for amendment of the Development Plan.

(25) Table 3 located on p. 4 of Secondary Amendment No. 130001 (Cafritz Property Development Design Standards (Exhibit 19 in SE 4775)), sets forth the build-to-line for uses located near various rights-of-way within the boundaries of the Plan. The subject property is "Location 2 – Van Buren Street @ Residential." The width of the roadbed at that location is to be 40-45 feet with two 8 foot parking lanes (including median). The distance from the centerline to the hotel must be 51-72 feet, drive lane dimensions must be 14-16 feet and the curb to build to line must be 12-20 feet.

(26) Staff of the Maryland-National Capital Park and Planning Commission noted that the setbacks in the certified Detailed Site Plan and those on all applications reviewed by them all match the build-to-line proposed for roadbed and streetscape dimensions shown on Table 3, *supra*, with the exception of the “Distance from Centerline to Building” column – proof that a clerical mistake must have occurred in calculating the distances in that column. (Reconsideration Exhibits 6 and 7; July 25, 2016 T. 10-12,17) A revised Table 3 has been submitted for inclusion in the record. (Reconsideration Exhibit 8)

(27) The error at issue is de minimis. For this reason I can agree with Staff that an administrative correction could be made. I do believe, however, that the Planning Board should provide a process for these actions in their procedures, or the District Council should provide one in the Zoning Ordinance, to ensure that the application is done in a uniform manner.

(28) At the conclusion of the reconsideration hearing Applicant submitted a new Special Exception Site Plan that accurately notes the required parking for the hotel and restaurant, and revises the set back of the hotel from the centerline of Van Buren Street from 43.3 feet to 40 feet. (Reconsideration Exhibits 17(a)-(c)) Staff had the opportunity to review the revised Site Plan and notes no objection thereto. (Reconsideration Exhibits 16 and 19)

### **Agency and Other Comment**

(29) The subject property lies within the municipal boundaries of the Town of Riverdale Park and across Baltimore Avenue (US 1) from the Town of University Park. The Town of Riverdale Park sent a letter in support of the request, without conditions. (Exhibit 32) The Town of University Park is also in support of the Application. (Exhibit 31)

(30) The Riverdale Park Mixed-Use Town Center Local Design Review Committee also voted to recommend approval of the request without conditions. (Exhibit 30)

(31) The Transportation Planning Section noted “all prior transportation findings and analysis for prior plan approvals by the District Council and Planning Board included the impact of the proposed hotel.” (Exhibit 14, p.53) It therefore concluded that the request would not adversely impact residents or workers in the area.

(32) The Historic Preservation Commission recommended approval of the request. It expressly noted that, given the materials to be used in constructing the hotel, “the new development should have no negative visual impact on the historic districts” to the south, west and north of the Cafritz property. (Exhibit 14, pp. 67-68)

(33) The Technical Staff found that the proposed use generally is consistent with the vision of the 2014 General Plan and conforms to the general land use recommendations of the 2006 Master Plan and SMA. (Exhibit 14) The Countywide Planning Section opined that there would be adequate police, fire and rescue, and water and sewerage

facilities to serve the hotel; and that it would be exempt from review as to adequacy of school facilities. (Exhibit 14, pp. 45-46)

(34) The Technical Staff offered the following justification in recommending that both requests be approved:

The proposed hotel use, and its accessory uses, are compatible with the adjacent uses proposed on the approved development plan and in the surrounding area. The site will contain ample parking and loading spaces to accommodate its patrons. The proposed hotel is located in close proximity to proposed retail along a major arterial highway (US 1). The applicant proposes a six-story structure that is consistent with the residential/commercial buildings proposed for adjacent parcels....

[T]he applicant seeks variances from several of the specific requirements of a special exception for a hotel in the M-U-TC Zone.... Development of the Cafritz Property has been the subject of numerous applications, development plans, site plans, subdivisions, amendments, and hours of public hearings and debate. From the beginning and throughout these processes, a hotel has been shown as the proposed use for this portion of Parcel F. However, it has long been recognized that the hotel use would require approval of a special exception.... We believe that the District Council and Planning Board, pursuant to their previous actions, have given their tacit approval for (or at the very least their implied willingness to consider) a hotel at this location, despite the fact that the site is neither located within a concentration of office/industrial uses nor fronting on a 70-foot right-of-way. The inclusion of the use as an integral part of the approved development scheme for the larger site constitutes an extraordinary situation, which is not of the applicant's making. This first criterion is met.... As a use permitted by special exception, a hotel is generally considered compatible with other uses in the M-U-TC Zone. The requirements of the Zoning Ordinance calling for an office/industrial park location and frontage on a 70-foot right-of-way reflect a decades-old planning paradigm out of step with a more modern approach embracing the aesthetic created by the mixed-use zones and the M-U-TC guidelines. While not every site in the County is appropriate for this approach, it is clear that, in this case, a mixed-use community with walkable neighborhoods, which could include a hotel in combination with retail commercial and residential uses, is considered to be a desirable outcome. To require the strict application of these standards would force the complete redesign of the site. Doing so, given the District Council and Planning Board's previous actions approving the concept, would be nonsensical and would place a peculiar and unusual practical difficulty upon the applicant. The applicant also correctly points out their close proximity to the M Square office park, across the CSX tracts to the east, which will be accessible by car, bike, or foot via the bridge required as a condition of previous approvals for the development. The second criterion is met.... The variances will not substantially impair the intent, purpose, or integrity of the Town of Riverdale Park M-U-TC Zone Development Plan, as amended by the Cafritz Property Development Plan and the secondary amendment thereto (SA-13001). Each of these plans envisions the site as a part of a mixed-use development consisting of commercial, residential, and recreational uses. To the contrary, approval of the variances would act to **implement** the intent of those documents. The use is permitted by special exception in the M-U-TC one and is therefore presumed to be compatible with similarly-zoned surrounding permitted uses. This criterion is met.... The applicant has shown that each of the three criteria for approval of a variance has been met. Staff recommends approval of this variance request....

A special exception use is considered compatible with uses permitted by-right within the one, as long as specific criteria are met. Unless unique adverse impacts are identified, the special exception may be approved.... The applicant has met their burden of proof in this instance....

(Exhibit 14, pp. 7-8, 14)

### **LAW APPLICABLE**

(1) A Hotel is permitted as a Special Exception in the M-U-TC Zone in accordance with Sections 27-317(a) and Section 27-365(a)<sup>3</sup> of the Zoning Ordinance.

(2) Section 27-317(a) 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 27-365(a) provides as follows:

Sec. 27-365. - Hotel or motel.

- (a) A hotel or motel may be permitted (except those covered under Subsection (b), below), subject to the following:
- (1) The proposed use shall be located in an area which is or is to be developed with a concentration of industrial or office uses;
  - (2) The proposed use shall have frontage on, and direct vehicular access to, a street with a right-of-way width of at least seventy (70) feet;
  - (3) The proposed use may include any of the following accessory uses. All accessory uses, and their square footages, shall be shown on the approved site plan. Notwithstanding any other

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<sup>3</sup> Section 27-365(b) of the Zoning Ordinance only applies to the use in the R-R Zone.

requirement of this Subtitle, these accessory uses shall be permitted without obtaining a separate Special Exception:

- (A) Cocktail lounge or night club;
  - (B) Gift shop;
  - (C) Beauty shop;
  - (D) Barber shop;
  - (E) Auditorium;
  - (F) Recreational uses;
  - (G) Sauna, public spa, or steam room;
  - (H) Solarium;
  - (I) Valet shop;
  - (J) Similar retail stores and consumer service establishments;
  - (K) Restaurant;
  - (L) Meeting facilities; and
  - (M) Lobby and registration area;
- (4) In reviewing the application, the District Council shall pay particular attention to surrounding existing and proposed land uses and the compatibility of the hotel or motel and its accessory uses with the surrounding area.

(4) The request must also satisfy the purposes of the M-U-TC Zone, found in Section 27-546.09 (a) of the Zoning Ordinance. This Section provides as follows:

- (a) The specific purposes of the M-U-TC Zone are:
- (1) To create with the community a development framework that can capitalize on the existing fabric of the County's older commercial/mixed-use centers and corridors.
  - (2) To promote reinvestment in, and the appropriate redevelopment of, older commercial areas, to create attractive and distinctive community centers for shopping, socializing, entertaining, living, and to promote economic vitality.
  - (3) To promote the preservation and adaptive reuse of selected buildings in older commercial areas.
  - (4) To ensure a mix of compatible uses which compliments concentrations of retail and service uses, including institutional uses, encourages pedestrian activity, and promotes shared parking.
  - (5) To provide a mix of commercial and residential uses which establish a safe and vibrant twenty-four hour environment.
  - (6) To establish a flexible regulatory framework, based upon community input, to encourage compatible development and redevelopment, including shared parking facilities, that will enhance the Town Center.
  - (7) To preserve and promote those distinctive physical characteristics that are identified by the community as essential to the community's identity, including building character, special landmarks, small parks and other gathering places, and wide sidewalks.

## Variance

(5) A variance may be granted if the request satisfies Section 27-230(a) of the Zoning Ordinance, which provides as follows:

(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.

(6) “Practical difficulties” has been defined in Carney v. Baltimore, 201 Md. 130, 137 (1952), as follows:

The expression “practical difficulties or unnecessary hardship” means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of “practical difficulties or unnecessary hardships” should not be made except where the burden of the general rule upon the individual property would not, because of its unique circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwanted invasion of the basic right of private property.

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

## Special Exception

(8) The Court of Appeals provided the standard to be applied in the review of a special exception application in 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.

## Burden of Proof

(9) Section 27-142 of the Zoning Ordinance places the burden of proof in any zoning case on the Applicant.

### CONCLUSIONS OF LAW

(1) The two requested variances must be granted before the Application can be approved. I, therefore, will address them first.

(2) Applicant requests variances from the requirements that it have frontage and direct vehicular access to a street with a right-of-way width of at least 70 feet, and the requirement that a hotel be located in an area which is, or will be, developed with a concentration of industrial or office uses. As noted, supra, the standard to be met in the grant of an area variance, is whether the subject property has “other extraordinary situations or conditions”; whether the strict application of the Zoning Ordinance “will result in peculiar and unusual practical difficulties” to Applicant; and whether the variance would substantially impair the intent/purpose/integrity of the General or Master Plan. (Section 27-230)

(3) The entire Cafritz development was subject to extensive review by various stakeholders. This review and ultimate District Council approval recognized the possible future development of a hotel at the particular location; in an area that was planned to have mixed residential and retail uses (rather than industrial or office uses); and, adjacent to a roadway whose public right-of-way width would be less than the requisite 70 feet because it was agreed that the sidewalks within the development would be privately maintained. Finally, the 2014 General Plan envisioned a local center or mixed use of the property, not primarily industrial or office uses. These facts render the subject property one subject to “other extraordinary situations or conditions”. The strict application of the Zoning Ordinance under these circumstances would preclude the Applicant from developing a hotel at the site, clearly resulting, “in peculiar and practical difficulties to” ... the owner of the property. I believe that the variances meet all tests and should be granted.

(4) Once the variances are approved, the Application can be found to be in conformance with all other applicable provisions of the Zoning Ordinance. The hotel will protect and promote the health, safety, morale, comfort, convenience, and welfare of the present and future inhabitants of the County by providing a service to visitors in the area; will implement the applicable Plans as well as the Approved Riverdale Park Mixed-Use Town Center Zone Development Plan since these Plans all recognized a mixed use in the Cafritz Development, and the Riverdale Park Development Plan expressly recognized development of a hotel at the site; there will be adequate public facilities and services, since the site is being developed in accordance with an approved subdivision plan which addressed such adequacy; and, the development will provide desirable employment and augment the tax base, as well as insure the social and economic stability of the County. (Section 27-317 (a)(1))

(5) The requested use furthers the purposes of the M-U-TC Zone since it is being developed in accordance with the recommendations of the M-U-TC Design Review Committee; approval would bring redevelopment to the area and create an attractive hotel that will encourage socializing, entertaining and economic vitality; will promote the

preservation and adaptive reuse of other buildings in older commercial areas within the Riverdale Park Town Center by promoting new visitors to the area; is designed in a manner that encourages pedestrian activity and promotes the mix of compatible uses; adds a commercial use to the residential uses and a restaurant/bar that will encourage a safe and vibrant twenty-hour environment; has been designed based upon community input; and is part of a development plan with small parks and gathering spaces, and wide sidewalks. (Section 27-317(a)(1)) Staff reviewed compliance with the few applicable provisions of DSP-13009 and recommended two conditions, which Applicant has satisfied. (Exhibits 13, pp. 12-13; 26(a)-(b), and 37)

(6) A variance has been requested from the strictures of Section 27-365(a)(1) and (2). The record indicates that the proposed use will include many of the permitted accessory uses set forth in Section 27-365(a)(3); however the uses and their square footage are not shown on the Site Plan. A condition has been added to address this deficiency. Once the variances are granted, the request can be found to be in conformance with all applicable requirements of the Zoning Ordinance. (Section 27-317(a)(2))

(7) As noted above, the Application comports with the applicable Plans and, therefore, will not substantially impair the integrity of any. (Section 27-317(a)(3))

(8) The use will be designed in a manner that conforms to the rigorous guidelines in the Town Center Development Plan, as well as the provisions of the Zoning Ordinance. Its architecture will be compatible with the surrounding area. The hotel will be placed in an area relatively distant from the existing residential homes in the area. For these reasons, I find that the proposed use will not adversely affect the health, safety or welfare of residents or workers in the area, nor will it be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4) and (5))

(9) The proposed use is in compliance with Tree Conservation Plan TCP2-010-13. (Section 27-317(a)(6))

(10) There are no regulated environmental features on the subject property. (Section 27-317(a)(7))

(11) The subject property is not located within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

**DISPOSITION**

Special Exception 4775 and Variance 4775 are approved, subject to the following conditions:

1. Any increase in gross floor area or land covered by a structure, or substantial change to the building materials identified on Exhibit 20(i) shall require a revision to the Special Exception Site Plan, notwithstanding Architecture Guideline No. 5 in the Cafritz Property Design Standards Guideline. (Shown as No. 110 in the Matrix - (Exhibit 21))
2. All development shall be in conformance to the Special Exception Site Plan, Landscape Plan and accompanying details. Prior to the issuance of permits, Applicant shall submit foldable copies of Exhibits 20(d), (e), (f), (g) and (h) for attachment to the Special Exception Site Plan.
3. Prior to the issuance of permits Applicant shall revise the Special Exception Site Plan to show all accessory uses, and square footage thereof, as required in Section 27-365 of the Zoning Ordinance, and submit it to the Office of the Zoning Hearing Examiner for approval and inclusion in the record.
4. The revised and approved Detailed Site Plan shall be submitted for inclusion in the record. It should reflect the information on the approved Special Exception.

[Note: The Special Exception Site Plan, Landscape Plan, and accompanying details are Reconsideration Exhibits 17(a)-(c), and Exhibits 20(d), (e), (f), (g), and (h).]