

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

**SPECIAL EXCEPTION
4845
AND
VARIANCE
4845**

DECISION

Application: Gas Station, Food or Beverage Store and Variance
Applicant: Hyattsville Brightseat Road RE, LLC
Opposition: None
Hearing Dates: January 26, 2022 and March 9, 2022
Hearing Examiner: Maurene Epps McNeil
Disposition: Approval with Conditions

NATURE OF PROCEEDINGS

(1) Applicant Hyattsville Brightseat Road RE, LLC is requesting approval of a Special Exception to construct a Gas Station and a Food or Beverage Store on two (2) acres of a parcel 5.303-acres in size on I-3 (Planned Industrial/ Employment Park) zoned land located in the northeast quadrant of Medical Center Drive (formerly Arena Drive and Brightseat Road. The entire parcel is currently improved with a hotel. Applicant also requests a variance to one provision of the Zoning Ordinance pertaining to the access to the Gas Station from Brightseat Road.

(2) The Technical Staff recommended approval of the request with conditions, and the Planning Board accepted Staff's recommendation as its own. (Exhibit 16)

(3) A second hearing was held because the variance request was not properly posted/advertised.

(4) No one appeared in opposition to the request at either hearing heard by this Examiner.

(5) A letter with supplemental information and revised Special Exception Site Plan were forwarded by Applicant's counsel on March 25, 2022 and the record was closed at that time. (Exhibits 48 ,49 (a) and (b), and 50)

FINDINGS OF FACT

Subject Property and Surrounding Uses

(1) The property is subject to prior zoning and subdivision approvals, discussed in the Technical Staff Report:

History and Previous Approvals: The property was the subject of Preliminary Plan of Subdivision 12-3266, approved by the Prince George's County Planning Board on December 17, 1969, for the construction of an elementary school, and Parcel A was subsequently recorded in Plat Book 76 page 16. It does not appear that the approved development was ever constructed. Subsequently, various conveyances of public road rights-of-way were made via deed from the original acreage of Parcel A, which were exempt from requirements of Subtitle 24, in accordance with Section 24-107(c)(4) of the Prince Georges County Subdivision Regulations. Parcel A was resubdivided in 2016 (Final Plat No.5-15059) to create Parcel 1, in accordance with the provisions of Section 24-111(c) of the Subdivision Regulations, as the subject property had a final plat of subdivision approved prior to October 27, 1970. At the time of resubdivision, the subject property was evaluated for adequate public facilities for commercial use under two development scenarios: the construction of two hotels, or the construction of one hotel and a convenience store with a fueling station. The resubdivision of the subject property was approved by the Planning Board on July 7, 2016 (PGCPB Resolution No.16-26) Detailed Site Plan DSP-05021 was approved by the Prince George's County District Council on June 13, 2016, for the construction of two 124-room hotels. To date, only one hotel has been constructed and the applicant's statement of justification (SOJ) indicates that the market is no longer conducive to construct the second hotel.

PGCPB Resolution No.16-26 contains three conditions of approval, and those relevant to the subject application are shown below in bold text. Staff analysis of the project's conformance to the conditions follows each one in plain text:

Total development shall be limited to uses that generate no more than 233 AM and 279 PM peak-hour vehicle trips. Any new development generating an impact greater than the identical herein shall require a new preliminary plan of subdivision with a new determination of the adequacy of transportation facilities.

At the time of the resubdivision of the subject property, adequate transportation facilities were evaluated for the subject property based on two separate development scenarios: the construction of two hotels, or the construction of one hotel and a convenience store with a fueling station. The trip cap established in

Condition 1 is not exceeded with the development scenario proposed in this application, as the proposal falls within the second scenario evaluated at the time of resubdivision. A traffic impact study was included in the applicant's submission. The traffic impact study is not a requirement of this application, as a test of transportation adequacy is not required. Its purpose was to address the impact of the proposed food and beverage store with a gas station with 16 fuel stations as well as an existing hotel. It identified a trip generation of 77 AM and 70 PM trips for the proposed food and beverage store with a gas station and 71 AM and 90 PM trips for the existing hotel. A previously approved Final Plat of Subdivision, 5-15059 has a trip cap on-site of 233 AM and 279 PM peak-hour trips. Both of these developments are within the identified trip cap....

Direct vehicular access to Arena Drive and the Capital Beltway (I-95/495) is denied.

Access is denied along both I 495/Capital Beltway, a freeway [,] and Medical Center Drive, an arterial road. One existing point of site access is provided to the proposed site in the northeastern portion of their property along Brightseat Road, a collector. It also serves as a shared access with the existing hotel.

SE-4845 reflects that direct vehicular access to Arena Drive is denied. However, since the area of the subject property adjacent to I-95/I-495(Capital Beltway) is not reflected on the submitted plans, the denial of direct vehicular access to the Capital Beltway is partially depicted. The entire boundary of Parcel 1 should be shown on the special exception site plan, and all property boundaries should be shown from which direct access to the Capital Beltway is denied.

The 2008 Water and Sewer Plan designates this property in water and sewer Category 3, Community System, within Tier 1 under the Sustainable Growth Act and will therefore be served by public systems.

General notes 15 and 16 on sheet 4 of SE-4845 indicate that the development is to be served by public water and sewer systems and that these systems are available to the development.

(Exhibit 16, pp.4-5; see, Exhibit 8)

(2) If the Application is approved the property will be resubdivided into two parcels, and Applicant's separate parcel will not include the current driveway access to the hotel from Brightseat Road. Applicant submitted an Approved Natural Resource Inventory Plan (NRI/090/15), a Stormwater Management Concept Approval (Case # 3656-2021-00), architectural elevations, a floor plan for the Food or Beverage Store, a Landscape Plan and a Lighting Plan with Details. (Exhibits 5, 7, 12, 19, 41, 42 and 49(b))

(3) The subject property is surrounded by the following:

North - Abutting the property to the north is an undeveloped wooded parcel

in the I-3 Zone; immediately beyond that is a vacant warehouse building in the I-1 Zone, part of the Landover Industrial Center which includes other occupied buildings

- South - Across Medical Center Drive (formerly Arena Drive) to the south is a stormwater management pond in the I-3 Zone, and the Future Care Capital Region rehabilitation center in the I-3 Zone
- East - The interchange of the Capital Beltway with Medical Center Drive (formerly Arena Drive), and hotels in the C-O (Commercial Office) Zone beyond
- West - Brightseat Road and wooded property containing a church in the I-3 Zone

(4) The neighborhood as defined by the Technical Staff is bounded on the north by Sheriff Road/Brightseat Road/Landover Road (MD 202); on the south by Central Avenue (MD 214); on the east by the Capital Beltway; and on the west by Hill Road.

General Plan/Master Plan/Sectional Map Amendment

(5) Applicant's expert land planner and the Technical Staff both noted that the 2014 General Plan ("Plan 2035") places the subject property within the Established Communities, as discussed in the Growth Policy Map. It also located the site within one of the Employment Areas.

(6) The property lies within the planning area governed by the 2010 Subregion 4 Master Plan and Sectional Map Amendment ("SMA"). The Master Plan/SMA had no specific recommendations for this property but did note it is within the Landover Metro Center, and recommended industrial land uses, and retail/service uses in support thereof, by virtue of retaining its I-3 zoning. The Environmental Infrastructure Section contained goals and policies concerning protection of the green infrastructure network within the Subregion, the restoration/enhancement of water quality, on-site management of stormwater through the use of environmentally sensitive management techniques, preservation of tree canopy, and conformance with the Countywide Green Infrastructure Plan of the Prince George's County Resource Conservation Plan.

Applicant's request

(7) Applicant is the contract purchaser of the subject property. (Exhibit 48) The

State Department of Assessments and Taxation has issued a Certificate in Good Standing authorizing it to conduct business within Maryland. (Exhibit 33) Applicant proposes to develop the site with a Gas Station with eight (8) multi product dispensers offering sixteen (16) fueling positions under a canopy and a 3,939-square-foot 7-Eleven Food or Beverage Store (referred to throughout the record as a "convenience store").¹ It also requests a variance from one of the access requirements for Gas Stations, as discussed more fully below.

(8) Edward Steere, Managing Director for Valbridge Property Advisors, prepared a Need Analysis in support of the instant Application, that addressed the need for both the Gas Station and the Food or Beverage Store. (Exhibit 21) He found there to be need for the use, if need is defined as "convenient, useful, suitable, proper, or conducive", to residential households and employees of the trade area (citing Baltimore County Licensed Beverage Association Inc. v. Kwon, discussed below). (Exhibit 21, p.3) The trade area for the Gas Station is centered primarily on the Capital Beltway between Central Avenue and Landover Road. (Exhibit 21, p.17) After establishing the trade area, the Analysis proffered the following support in finding a need for the use:

The subject property has excellent frontage on the westbound side of Arena Drive as well as for those traveling southbound on Brightseat Road. The site is directly off of the Capital Beltway and roughly a half mile from FedEx Field and Largo Town Center. Arena Drive runs approximately one mile east to west between MD-202 and the Capital Beltway, passing through a high density of transit-oriented development which surrounds the Metro Station. Brightseat Road stretches roughly four miles between MD-704 in Glenarden south to Central Avenue and carries a significant volume of local neighborhood traffic. Based on current site plans, the site will have two access points on the shared roadway with the hotel.

The Maryland Department of Transportation State Highway Administration published an estimated annual average daily traffic (AADT) count in 2019 on Brightseat Road as 11,082 on its section between MD 202 to MD 214. On Arena Drive between Brightseat Road and Maryland Route 202, the 2019 AADT was 13,401. More notably, the AADT on the Capital Beltway between Arena Drive and MD 202 was 240,121 and 236,783 between Arena Drive and MD 214.

The subject property and its immediate surrounding area is zone I-3 (Planned Industrial/Employment Park). The general purpose of this zone as provided by the Prince George's County Zoning Ordinance among other provisions is to provide increased and enhanced employment opportunities for residents of the County through a mixture of industrial, research, office, and in certain instances specific retail commercial uses. The area directly north of the subject carries a I-1 (Light industrial) zoning designation and is a continuation of the land use pattern in this strip of land which lines the Capital Beltway. Further west of the site surrounding FedEx Field, the dominant land use changes to R-M

1 There are various square footages for the Food or Beverage Store used in the record. I have settled on the amount shown in the revised Special Exception Site Plan. (Exhibit 49(b))

(Residential Medium), however most of this land area is presently used as parking for events. There are one-off-zoning districts on this western side of the Beltway including R-18 (Multifamily Medium Density Residential) surrounding the Lansdowne Village apartments, R-55 (Single Family Detached) and C-O (Commercial Office) surrounding the Jericho Residences active adult apartment community.

Across the Capital Beltway to the East is primarily zoned as C-O (Commercial Office) and MXT (Mixed Use Transportation Oriented) to the south of Arena Drive. Using CoStar estimates, this area currently offers 1.5 million sq. ft. of office space, 832,000 sq. ft. of retail space, 750,000 sq. ft. of flex space and more than 1,400 multifamily units. There are multiple projects currently under construction including the Amore Apollo multifamily community and the UM Capital Region Medical Center which is stated to open in 2021. With this overview of the surrounding area, we believe the proposed fueling station and convenience store is a compatible use and will retain the character of the area....

During the Summer of 2019, the Prince George's County Council authorized MNCPPC to prepare a Countywide Map Amendment (CMA) to implement the zones adopted by the Council through CB-13-2019. The CMA is the second part of the zoning rewrite project, and the new zoning ordinance cannot be used until the new zones are applied to all properties throughout the County. Zoning changes are expected to most typically expand the flexibility of the types of uses permitted in each zone and will not affect the permitting or the development review process for most applications are submitted prior to the effective date of the new ordinance.

The subject site will remain zoned for Industrial/Employment use under the IE zoning designation. The IE zone generally follows the same purpose as the previous zoning designation of I-3. Other nearby zones such as the MXT and C-O on the east side of the Beltway will be reclassified as two classes of the Regional Transit-Oriented Center – High Intensity (RTO-H) zoning districts, "edge" and "core". "Edge" and "core" areas are distinguished by the walking distance from an existing or proposed transit station with the "edge" area accommodating less intense development with more of a residential focus. The purpose of the RTO-Zone is to provide land for high-intensity, mixed-used center that are intended to capture the majority of the County's future residential, and employment growth and development.

The area surrounding FedEx Field will follow the Legacy Comprehensive Design (LCD) once the ordinance goes into effect. This zone covers most of the land in the County for which a valid Basic Plan, Comprehensive Design Plan or Specific Design Plan was approved prior to the effective date of the new zoning ordinance. Development within the LCD Zone shall comply with the relevant plan and with the standards applicable in the zone prior to the effective date of the new zoning ordinance (in this case medium density residential)....

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The subject site is located just outside the boundaries of the Morgan Boulevard and Vicinity study area which extends north from the Central Avenue to the former Landover Mall site. This study evaluated the development potential of multiple uses at key sites within the study area, including the UM Regional Medical Center and the Woodmoore Town Center. Although none of the uses analyzed in the market study are guaranteed in the near term, the action plan is a useful tool for accelerating the intent of the Subregion 4 Master Plan and provides some perspective on the character of the area going forward. The market study suggests that the study area is well positioned to become a regional destination for amateur indoor athletics as well as an area for active adult, senior living and wellness-based communities, both of which fit within the approved zoning for the area. Each of these uses would benefit from the colocation of a convenience store nearby. The subject is well situated just off the Capital Beltway and roughly a half mile from FedEx Field and ongoing mixed-use development surrounding the Largo Town Center Metro Station. The subject is located on a highly visible corner lot and shares a driveway with the Wood Spring Suites hotel. Brightseat Road and Arena Drive serve a healthy volume of daily traffic which includes commuters, regional travelers, and a significant number of commercial trips to retail destinations at Largo Town Center, Kingdom Square, and Woodmoore Town Center.

The size is zone IE (Industrial/Employment) and is surrounded by light industrial uses to the north and south, mixed-use/commercial office uses to the east and medium density residential development to the south. The proposed 7-Eleven food and beverage store and gasoline station will offer services that are supportive of the existing developed area as well as future nearby endeavors such as regional indoor athletics complex or active adult community as set forth in the Morgan Boulevard Action Plan published in 2018. The site also aligns with the general purpose of the Planned Industrial/Employment Park zone as a service use that is compatible and retains the character of the surrounding area. The accessibility and proximity of the site to the highway system provides an ideal location

for a convenience store and gas station and the addition of this use will aid in the area in transitioning toward a wider mix of flex, commercial, residential and other uses....

(Exhibit 21, p.7,14,15,16)

(9) Mr. Steere provided a separate Need Analysis for the Food or Beverage Store proposal. (Exhibit 44) It concluded there is a need for this use, as well, defining need in the same manner utilized in his Need Analysis for the Gas Station:

Valbridge believes that the proposed convenience store with gas will be convenient and therefore necessary to the residential households and employees of the trade area. We do not believe that the proposed gas station and... (convenience) store will detract from or impair the health, moral, or welfare of residents in any conceivable way, given the significant volume of daily pass-through travelers who need expedient fuel and convenience service. Recent industry surveys reveal that while the price per gallon is still one of consumers top considerations when choosing a gas station, an increasing proportion of consumers are more likely to go out of their way to visit a certain brand of station which has the quality of in-store offerings such as fresh food and loyalty programs they value. As the nation's largest convenience store and gas station franchise with a vast network of market intelligence and proprietary products, 7-Eleven is well equipped to capitalize on this this emerging trend. Valbridge conservatively estimates that there is currently annual demand for 16.2 million gallons of fuel based on household and employee presence alone....

(Exhibit 44, p.12-13)

(10) Mr. William Owen, the assistant vice president of Penntex Venture LLC, testified on the Applicant's behalf. Penntex Ventures was hired by 7- Eleven to "assist in guiding... this [application] through the various process of entitlement, lease negotiations, lease executions and ultimately prosecution of that lease as to... requirements for a build to [project] and deliverables and contract management with contractors when the time comes, management of consultants during the entitlement process, et cetera.". (January 26, 2022, T.24) Mr. Owen testified that there is an executed lease between Applicant and 7-Eleven, and that 7-Eleven believes the site as designed will function adequately for all of its needs. (January 26,2022, T. 26-27) He also discussed the various steps in design that were taken to ensure that the 7-Eleven complements the adjacent existing use, the expanded food items that will be offered on site (including fresh-made sandwiches and fired items), and the limited seating available to customers. (January 26, 2022, T. 27-34)

(11) Wes Guckert, accepted as an expert in the field of transportation planning and engineering, prepared a Traffic Impact Analysis (Exhibit 13) and testified on Applicant's behalf. He noted that the primary access to the site will be coming from Medical Center Drive (formerly Arena Drive), and the Capital Beltway to Brightseat Road where it will enter the site via the existing entrance for the adjacent hotel and then enter into the Applicant's site. (January 26, 2022, T.62) Although the Zoning Ordinance does not

require review of a traffic impact study, one was prepared to show that the “trip cap established in a previous Preliminary Plan of Subdivision will not be exceeded for the overall property that includes a 7-Eleven and the hotel site and together those two uses do not exceed the trip cap from the Preliminary Plan of Subdivision.” (January 26, 2022, T.63) Mr. Guckert’s Traffic Impact Analysis supports his conclusion that the established trip cap will not be exceeded:

The purpose of this Traffic Impact Analysis is to address the impact of the proposed 7-Eleven Super Convenience Market with fuel pumps planned in the northeast quadrant of the Brightseat Road and Arena Drive intersection in Prince George’s County. The Super Convenience Market is proposed to consist of 4,050 sq ft of space with 16 fueling positions. Overall, the site will generate 77 new morning peak hour trips and 70 evening peak hour trips. Part of the subdivision includes an existing Woodsprings Suites Hotel. We conducted trip generation studies for a week in October 2019 and found the average number of trips over a 5-day period for the hotel was 22 morning peak hour trips and 21 evening peak hour trips....

The scope of services undertaken as a part of this study was as follows:

- The traffic counts for the Woodsprings Suites Hotel
- Trip generation for the proposed 7-Eleven Store
- An analysis of the site access along Brightseat Road

In summary, the proposed convenience store, when combined with the existing traffic from the Woodsprings Suites Hotel (pre-pandemic) generates less than the 233 morning peak hour trips that were approved and 279 evening peak hour trips that were approved under Subdivision 5-15059. Furthermore, the site access is projected to operate at acceptable levels of service during the peak periods.

(Exhibit 13, p.1)

(12) Mr. Nicholas Speach, accepted as an expert in the area of civil engineering, testified on Applicant’s behalf and prepared the Special Exception Site Plan. He explained the Plan’s compliance with applicable zoning provisions as follows:

[The site has access] on both Brightseat and Area Drive. And Brightseat Road does have a right-of-way width of 80 feet which is greater than the 70 feet required.... Actually the topography of Brightseat Road and the site itself [impact the ability to access the roadways.] Brightseat sits much lower than the site and... there’s actually a retaining wall and some steep grades between the site and Brightseat. So there couldn’t be an access point directly off of Brightseat outside of the access drive that is already there [for] the hotel... [The prior] subdivision plat has a [condition that denies access to Arena Drive]....

(January 26, 2022, T.70-71)

(13) Mr. Speach also noted the following:

- there isn’t a school, outdoor playground, library or hospital within 300 feet of the subject property;

- the Site Plan includes a note that there will be no display/rental of cargo trailers, trucks, or similar uses, nor storage or junking of wrecked motor vehicles;
- the access to the driveway which serves the current larger unsubdivided site is 35 feet in width and 12 feet from the point of curvature of the adjoining property which will become the residue of the hotel site (as shown on the revised Site Plan);
- the access driveways are defined by curbing; there are sidewalks at least 5 to 6 ½ feet in width between the building line and the curb in those areas serving pedestrian traffic;
- the gasoline pumps and the service appliances are over 60 feet behind the street line;
- there will be no repair services offered on site;
- architectural elevations were filed along with the Site Plan;
- the topography of the site and abutting lots to a depth of at least 50 feet, is shown on the Site Plan;
- a trash enclosure and the air and vacuum machines are shown on the Site Plan; and
- there will be no exterior vending machines on the site.

(January 26, 2022, T.71-78,88)

(14) Finally, Mr. Speach explained that Applicant disagreed with Staff's recommended condition limiting the height of its freestanding sign because Section 27-614(b) of the Zoning Ordinance (2019 Edition) notes that the sign cannot be greater than the height of the lowest portion of the roof of any building in the employment park. The adjoining hotel has a sign that is 35 feet, 10 inches tall. Mr. Speach did not have the exact dimensions of the hotel but noted that "there is nothing lower [than] 35 feet ...[a]nd that 35 feet 10 was what was specified in the previous Detailed Site Plan Staff Report ...[s]o that is where our assumption of the 35-foot 10-inch lowest building height came from." (January 26, 2022, T. 81-81) Applicant proposes a maximum height of 25 feet for its sign. (January 26, 2022, T. 82)

(15) Mr. Mark Ferguson, testified on Applicant's behalf, and was accepted as an expert in the area of land use planning. He explained that the uses proposed are a Gas station with an accessory Food or Beverage Store, with twelve (12) seats and thirty-one (31) parking spaces. Staff did not share Mr. Ferguson's position that the store is an accessory use, permitted by right in the zone if within an industrial park. While I am willing to agree that the use lies within an industrial park (since it is an undefined term and the property is located in the I-3 Zone) I am unable to find that the proposed Food or Beverage store is accessory since the witness did not provide further support for this position (i.e., that it is subordinate in purpose, area, intensity, etc.). Accordingly, I find that it must be approved as a special exception use and not permitted by right.

(16) Mr. Ferguson submitted a Land Planning Analysis in support of the request. (Exhibit 43) In his Analysis Mr. Ferguson reviewed the Application's compliance with applicable provisions of the Zoning Ordinance and conformance with the 2010 Subregion 4 Master Plan and Sectional Map Amendment, and the 2014 General Plan ("Plan 2035"). The witness found compliance with the Master Plan which designated the site for industrial future land use and the SMA which retained the site in the I-3 Zone. He explained that Plan 2035 "placed the property in the Established Communities growth policy area, and further within a designated Employment Area " and " [t]he Generalized Future Land use map designated it for Employment/ Industrial land use." (Exhibit 43, p.3) Mr. Ferguson also addressed the Application's compliance with the purposes of the Zoning Ordinance (Exhibit 43, pp. 5-11)

(17) Mr. Ferguson opined that the request satisfies the criteria for approval in Sections 27-317(a) and 27-358 of the Zoning Ordinance (2019 Edition). As noted, *supra*, he believes the Food or Beverage Store is permitted by right in the I-3 Zone, in accordance with footnote 42. However, acting under an abundance of caution, he addressed conformance with Section 27-355 of the Zoning Ordinance (2019 Edition) as well. (Exhibit 43, pp. 5-16) The following is a synopsis of the reasoning provided for his opinion:

- The request is in harmony with the purposes of the Zoning Ordinance since the modern Gas Station and Food or Beverage Store will provide up to date stormwater management, satisfy the current Landscape Manual and Tree Canopy Coverage regulations, will not result in a proliferation of Gas Stations but will offer safe and convenient access to needed uses (such as fresh and packaged foods, and gas) in the area;
- The uses will implement the 2014 General Plan as both are context sensitive infill development and supporting uses for the industrial/employment uses in the surrounding area;
- The uses will implement the 2010 Subregion 4 Master Plan since the Plan does not pay a great deal of attention to the area surrounding the subject property but does recommend it for industrial uses- and this, coupled with the I-3 Zone's purposes of accommodating specific retail/commercial uses to enhance viability of the zone, supports a finding of harmony with the Master Plan;
- There is harmony with other applicable Functional Master Plans since the area is not mapped as containing any Regulated Areas of the County's Green Infrastructure Network, no historic sites or resources are proximate to the site (so the Historic Site and Districts Plan is not affected), and the Countywide Master Plan of Transportation's proposal of future bike lanes can be accommodated within the existing right-of-way for Medical Center Drive/ Bishop Peebles Drive;

- Vehicular traffic will be well within the limits of an existing subdivision trip cap and no residential development is proposed so it will be developed with adequate public facilities;
- The uses will address the needs of County workers by providing access to gasoline and convenience store products at one safe, easily accessible location;
- All regulations pertaining to adequate light, air, and privacy will be met;
- The uses will be developed to meet all siting setbacks and to provide roadside and parking lot landscaping and the screening of trash enclosures, vacuum and air pumps;
- The uses will require the hiring of employees and will serve the needs of customers;
- No new entrances will be created from Brightseat Road;
- There will be no undue noise generated by the uses, modern stormwater management measures will be utilized, and the request will satisfy the Woodland and Wildlife Habitat Conservation Ordinance.

(18) The purposes of the I-3 Zone are met for similar reasons, and because the uses will be commercial/retail uses developed at the periphery of the industrial area and fronting on an arterial roadway, thereby enhancing the viability of the zone.

(19) Mr. Ferguson's expert opinion is that, once a variance is approved, the Application satisfies all specific special exception requirements for the Gas Station, and provided the following support for said opinion:

- The subject property has approximately 280 feet of frontage on Brightseat Road, an arterial with a right-of-way width of 80 feet. Applicant seeks a variance from the requirement that it have direct vehicular access to the street.
- The nearest lot containing a school outdoor playground, hospital or library, Jericho Christian Academy, is approximately 1,130 feet away.
- There shall be no display or rental of vehicles, storage or junking of vehicles, or repair service on site.
- The existing access driveway from Brightseat Road is 30 feet wide, several hundred feet from the point of curvature of the intersection curb return and is 50 feet from the side lot line of the adjoining lot. In an abundance of caution Applicant has revised the Special Exception Site Plan to ensure that the 25-foot-wide "egress" driveway from the private road for the hotel into the Gas Station itself is 12 feet from the side lot line of the adjoining hotel site.
- All access driveways are defined by curbing. (Exhibit 49(b))

- A 5-foot-wide sidewalk is proposed along the site's frontage along Brightseat Road; none is proposed along Medical Center Drive, but it does not serve pedestrian traffic. The Master Plan of Transportation notes that a hard trail exists on the south side of Medical Center Drive to accommodate cyclists or pedestrians.
- The Site Plan indicates that the concrete pad under the gas pumps will be at least 60.9 feet behind the nearest street line.
- Applicant has submitted architectural elevations that demonstrate compatibility with the adjoining hotel. (Exhibit 41)
- The Site Plan includes the requisite topography of the site and abutting lots.
- The location and details for the trash enclosures are provided on the Site Plan.
- No exterior vending machine/ vending areas are proposed.
- Applicant has agreed to comply with procedures to be followed upon the abandonment of the Gas Station.
- Reasonable need for the use has been addressed by Mr. Steere.

(20) Finally, Mr. Ferguson proffered the following in support of Applicant's variance request:

[A] variance is being sought from the requirement of [Section] 27-358 (a)(1) that the subject property shall have direct vehicular access to a street with a right-of-way width of at least (70) feet.

At the moment, the Special Exception area is located within a parcel of land which has both sufficient frontage on, and direct vehicular access to, a street with a right-of-way width of at least seventy feet (Brightseat Road). It is, however, the intention of the Applicant to subdivide off the Special Exception Site area into a separate subdivided lot, and the Special Exception Site Plan illustrates that the existing access point is not within the limits of the Special Exception Area.... As the owner of the property has indicated its desire not to have their remainder encumbered by the Special Exception area, and because topographic and safety considerations restrict the creation of a separate entrance for the subject property (i.e. the Special Exception Area), grant of variance will be necessary since the configuration of the future subdivided lot will conflict with the strict application of [Section] 27-358(a)(1), and in any case since the point of vehicular access to the street with the seventy-foot-right-of-way is outside of the limits of the Special Exception.

It is also noted that at the time of subdivision, approval by the Planning Board to access the proposed lot defined by the Special Exception area by a private road pursuant to [Section] 24-128(b)(9) will be necessary as well....

The subject property is compromised by exceptional topographic conditions which separate the usable area of the property from Brightseat Road. The existing driveway which is proposed to be shared (but is outside of the Special Exception Area) is at the point of least vertical difference between the development area and Brightseat Road.

The extraordinary condition of denial of access along Medical Center Drive because of its proximity to the Beltway interchange is another compromising factor which limits access to the private driveway....

The strict application of this subtitle would result in exceptional or undue hardship upon the owner of the property as compliance would make it impossible for the use to be approved....

Because the development proposed is in accordance with the recommendations of the General Plan and the [Master] Plan as described above, the approval of the requested variance will not impair their purpose, intent or integrity.

As such, the requested variance would be in conformance with the criteria of [Section] 27-230(a).

(Exhibit 43, pp. 16-17)

Agency Comment

(21) The Department of Permitting, Inspections and Enforcement noted that the 2018 Water and Sewer Plan designated the subject property in Water and Sewer Category 3, in the Growth Tier, and within Tier 1 under the Sustainable Growth Act. (Exhibit 16, Backup p. 68) The Fire Department opined that fire access to the site appears adequate but recommended a condition that a fire hydrant "be provided within 500 feet of the most remote portion of the building as hose is laid by the fire department (around obstacles, corners, etc.)." (Exhibit 16, Backup p. 69)

(22) The Technical Staff recommended approval of the Gas Station and Food or Beverage Store as well as the variance.

(23) Once the variance is addressed, Staff proffered that the Gas Station satisfied the following provisions of the Zoning Ordinance:

- The purposes of the Zoning Ordinance found in Sections 27-102(a)(1)-(15) and the purposes of the I-3 Zone found in Section 27-471(a) "are in harmony" with the proposed use and Special Exception Site Plan, noting that the uses will help support industrial and commercial uses in the zone. (Exhibit 16, pp.6-7)
- The uses will not substantially impair the Master Plan since it recommends industrial land uses on the property and Plan 2035 recommends that development in the Established Communities be context- sensitive infill and low-to medium-density. (Exhibit 16, p.9)

- The use is laid out in a manner that provides acceptable internal circulation of vehicles and will serve the needs of the community by providing “convenient food, beverage and gas for the area.” (Exhibit 16, p.9)

(24) The Urban Design Section noted that the use and improvements on site also require conceptual and detailed site plan approved since the property is in the I-3 Zone. It also believed that conformance with the applicable landscaping and tree canopy coverage requirements, would be ascertained at the time of detailed site plan review. 2

(25) The Transportation Planning Section duly noted there are no transportation related findings for the request other than a review of the impact it will have on the health, safety and welfare of residents or workers in the area. Nonetheless, it reviewed the transportation policies within the Master Plan and the Countywide Master Plan of Transportation and found their respective recommendations that Brightseat Road be four lanes with a roadway width of 80 feet and that Medical Center Drive (formerly Arena Drive) should have approximately four to six lanes with a roadway width between 120-150 feet have been completed and no future dedication will be required for the subject property. It also noted that it reviewed the traffic impact study that Applicant was not required to supply and agreed that the trip generation rates identified for the two proposed uses are within the trip cap established in the previously approved final Plat of Resubdivision 5-15059. (Exhibit 16, Backup pp. 54-55)

(26) After reviewing the Variance request, Staff recommended approval and offered the following reasoning in support of its recommendation:

The applicant submitted ... a variance request to allow access to a private driveway. The proposed use will access to Brightseat Road via shared use of the driveway that serves the existing hotel. Therefore, the site does not provide direct access to Brightseat Road and requires a variance for access via a private driveway....

The subject site has frontage on three sides, two of which are arterial or higher classification, and access has been denied to those roadways through previous approvals of DSP-15021 and Final Plat of Resubdivision 5-15059, pursuant to Section 24-111(c)(4) of the Subdivision Regulations. Therefore, access for Parcel 1 has been restricted to Brightseat Road for the existing hotel access driveway. Furthermore, the topography of Brightseat Road and the limited distance to the intersection of Arena Drive from the existing driveway was found to be the only

2 These matters may have to be revisited at that time but, pursuant to Section 27-296 of the Zoning Ordinance (2019 Edition), a Landscape Plan must be reviewed (and therefore approved) by the Zoning Hearing Examiner when she considers an application for a special exception.

appropriate access for Parcel 1. The variance, if granted, would allow the food [or] beverage store/gas station use to access the private driveway serving the hotel....

According to the applicant's SOJ, an area variance is being pursued to access the existing driveway serving the hotel on Parcel 1. The SOJ states that 'when requesting an area variance ..., an applicant is only required to show the existence of practical difficulty.' The most appropriate access was previously determined during the DSP phase and was restricted to Brightseat Road. Due to the proximity to the intersection of Arena Drive and the topography of Brightseat Road, safe access is not possible and presents a practical difficulty to further development of the site....

The subject site is within the boundaries of the Subregion 4 Master Plan and the proposed use conforms to the recommendations of the master plan. Therefore, the variance request will not impair the intent, purpose, or integrity of the master plan.

Staff recommends approval of the requested variance to allow vehicular access via a private driveway serving the existing hotel use, with approval from the Prince George's County Department of Permitting, Inspections and Enforcement....

(Exhibit 16, pp. 16-17)

(27) The Technical Staff offered the following reasoning to ultimately support its recommendation of approval of the Special Exception Application, with conditions:

A special exception use is considered compatible with uses permitted by-right within the Planned Industrial/Employment Park (I-3) 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 is to show that the proposed use, at this particular location, would not have adverse impacts above and beyond those inherently associated with the special exception use, regardless of its location within the I-3 Zone.

Based on the applicant's revised statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings, as set forth in the Prince George's County Zoning Ordinance. These findings include those in Section 27-317 (in general), Section 27-355 for a food or beverage store, and Section 27-358 for a gas station. It should be noted that the findings for Section 27-471 for I-3 Zone purposes and regulations will be addressed at the time of future conceptual site plan and detailed site plan applications. Therefore, staff recommends approval of Special Exception SE-4845, Hyattsville Brightseat 7-Eleven, subject to ... conditions....

(Exhibit 16, p. 18)

LAW APPLICABLE

(1) The Special Exception uses may be approved if they satisfy Sections 27-317, 27-355 and 27-358 of the Prince George's County Zoning Ordinance (2019 Edition). These Sections provide as follows:

Sec. 27-317. Required findings.

- (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.

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.

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 nearest gas pump on the subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, hospital, or a structure used as a residence 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.
- (11) At least two (2) Level 3 or DC fast charger electric vehicle charging stations must be provided on-site for public use.
- (12) Any Special Exception or Detailed Site Plan application filed prior to January 1, 2022, and approved shall not be subject to this provision and shall be deemed a conforming use.

(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.

(2) The request must also satisfy the purposes of the I-3 Zone found in Section 27-471 of the Zoning Ordinance (2019 Edition):

Sec. 27-471. I-3 Zone (Planned Industrial/Employment Park).**(a) Purposes.**

- (1) The purposes of the I-3 Zone are:
 - (A) To provide increased and enhanced employment opportunities for the residents of the County and areas for industries, research facilities, and offices which have common characteristics with respect to site requirements, desired amenities, compatibility of operations, general functional classifications, and access;
 - (B) To provide for a mixture of industrial, research, office, and in certain instances specific retail commercial uses (along with compatible institutional, recreational, and service uses) in a manner which will retain the dominant industrial/employment character of the area, while also providing for the enhanced viability of the zone by providing for the location of certain retail commercial uses on the periphery of the area, specifically when the periphery fronts on, and is adjacent to, arterial roadways;
 - (C) To permit uses which, when compared to the uses permitted in other Industrial Zones, will minimize detrimental effects on uses of adjacent land, especially where adjacent land is being used commercially; and
 - (D) To provide development standards which assure the compatibility of proposed land uses with surrounding land uses, maximize open space so as to create a park-like setting, and improve the overall quality of industrial/employment areas in Prince George's County.

(3) Section 20-504 of the Maryland Land Use Article Code Annotated addresses the need for access to a road as a prerequisite to the issuance of any building permit:

(a) In general. A permit to construct a building or structure in a subdivision may not be issued unless the road giving access to the lot where the building or structure is proposed to be located:

- (1) has the legal status of a public road or was dedicated to public use;
- (2) corresponds in its exact location with a road shown on a subdivision plat approved by the Commission or with a master plan of transportation or plat adopted by the Commission; or
- (3) is on a private right-of-way or easement approved as adequate by the county council in accordance with subsection (b) of this section.

(b) Standards; delegation -By local law, the county council may:

- (1) adopt standards to assure that a private right-of-way or easement is adequate to provide access to a lot where a building is proposed to be located; and
- (2) delegate to the executive branch or county planning board the authority to approve a private right of-way or easement that is adequate under item (1) of this subsection.

Necessity/Need

(4) The Zoning Ordinance and the County Code do not define the terms “necessary” or need. 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 (2nd College Edition) defines it as “essential” and “indispensable”. The Oxford Languages Dictionary (online) defines “need” as “circumstances in which something is necessary” or “a thing that is wanted or required.” Thus “need” and “necessary” share similar definitions.

(5) 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.” Accordingly, I believe the proper standard to apply in the review of both special exception requests is whether the Gas Station/Food or Beverage Store will be “convenient, useful, appropriate, etc.” given the nature of the use, and the District Council has adopted this definition of need/necessity in prior Gas Station Special Exception and Food or Beverage Store Special Exception heard by it.

Variance

(6) Applicant's request for a variance must satisfy the criteria set forth in Section 27-230 (a) of the Zoning Ordinance (2019 Edition). This Section 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 is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features);
 - (2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property;
 - (3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;
 - (4) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any area master plan, sector plan, or transit district development plan affecting the subject property; and
 - (5) Such variance will not substantially impair the use and enjoyment of adjacent properties.
 - (6) Notwithstanding any other provision of this Section, a variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.

(7) "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.

(8) An area variance (such as the one 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)) Finally, the hardship may not be self-created. As noted by the Court of Appeals in Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC., 439 Md. 588, 623-624 (2013); 439 Md. 588, 623-624, 97 A.3d 135 (2014):

[T]he critical issue in determining whether a hardship is self-created is whether the property owner could have avoided the need for a variance. In other words, if a property owner has a hand in creating the ‘peculiar circumstances’ that cause his need for a variance, the owner’s hardship is self-created. But when the ‘peculiar circumstances’ arise from the zoning restrictions themselves, the owner’s hardship is not self-created....

Special Exception

(9) 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.

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102 (of the 2019 Edition). I agree with the expert land planner’s analysis

as to why/how the request meets all applicable purposes but would note that the instant Application satisfies the following purposes for the following reasons in particular:

To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County

The Gas Station will serve the needs of all County residents that rely on the automobile as a means of transportation. The Food or Beverage Store will further the comfort and convenience of all purchasing gas at the site as it will provide a “one-stop” shopping experience. It will also be convenient for pedestrians in the area since it will provide an opportunity to purchase items of food or drink on their way to work, school, home or exercise.

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, and the requested uses are permitted in said Zone. While the Sector Plan has no particular recommendation for the subject property, the SMA retained its I-3 zoning thereby recognizing the need for limited retail/ commercial uses such as those proposed in the instant request. The record indicates no impact upon any Functional Master Plan. Accordingly, this purpose is satisfied.

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

Development of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since all vehicular trips are within the trip caps previously imposed on development on the property, no residential development is proposed, and no impact on other public facilities has been identified.

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

The two uses will be developed in accordance with all applicable laws, once the variance for the Gas Station is addressed. The developer will be

providing stormwater management, new sidewalks, and will not increase the current number of driveway accesses from Brightseat Road, thereby reducing the possibility of car accidents on that highly traveled arterial. The uses also blend in with the adjacent hotel in an attractive manner that should not detract from it or the other properties in the area. This purpose is, therefore, met.

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

Both uses ensure that a certain number of jobs will be provided and that sales taxes will be collected, thereby contributing to the County's tax base.

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

(2) The Application satisfies the purposes of the I-3 Zone since there will be an increase in employment opportunities for the residents of the County, and these retail commercial uses will retain the dominant industrial/employment character of the area and are located along the periphery of the employment park and front on arterial roadways. Finally the uses are designed in a manner that minimize detrimental effects on the adjacent hotel (since the elevations show it will be designed in a complementary manner) and will preserve trees and open area. (Sections 27-317(a)(1) and 471)

(3) The Food or Beverage Store and (once the variance is granted) the Gas Station use can be found to be in conformance with the applicable provisions of the Zoning Ordinance. (Section 27-317 (a)(2))

(4) Again, both uses conform to the General Plan's vision of context sensitive infill development, the Master Plan's environmental policies, and the SMA's determination that I-3 zoning and uses are should be preserved on the site. (Section 27-317(a)(3))

(5) The uses will be offer needed services to residents, visitors and employees within the Landover Metro Center - useful and convenient to those who live/work near or travel 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))

(6) The proposed site (Parcel 1) was developed in accordance with Tree Conservation Plan TCP-026-2015 which was approved with DSP-15021 and the instant special exception will not impact or alter that approval. Moreover, Staff has indicated there are no regulated environmental features on the special exception portion of the site. (Section 27-317(a)(6) and (7))

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

(8) The Food or Beverage Store satisfies the criteria found in Section 27-355 of the Zoning Ordinance. Applicant's expert prepared a market study that established a reasonable trade area near the site and noted that given the dearth of fresh food options at the other Food or Beverage Stores within said area, their age, and their smaller size, there is a reasonable need for the proposed store if need is defined as "useful, appropriate, and convenient." (Section 27-355 (a)(1)) The subject property is adjacent to Medical Center Drive (formerly Arena Drive) and Brightseat Road, providing safe access to the Store, the Store is of sufficient size to offer a bevy of fresh and packaged foods and there is adequate parking – thus the Store can be found to meet the needs of the neighborhood. (Section 27-355 (a)(2)) The Store is the type of retail use that could support the industrial uses in the area and is in a parcel that has already been developed with a hotel, so approval should not unduly restrict the availability of land or upset the balance of land use in the area for other allowed uses. (Section 27-355 (a)(3)). The property is not located in the I-1 or I-2 Zones. (Section 27-355 (a)(4)) There will be no sale of alcoholic beverages in the Store, and a note will be added to that effect. (Section 27-355 (a)(5))

(9) Similarly, once the variance is addressed the Gas Station can be found to satisfy the express provisions regarding its approval. The property has approximately 295 feet of frontage along Brightseat Road, an 80-foot-wide collector roadway. The Special Exception boundaries do not include an access to Brightseat Road but an easement to be executed in the near future, and future applications will ensure that it has access to the existing 30-foot-wide driveway that accesses Brightseat Road. (Section 27-358(a)(1)).

(10) There are no schools, libraries, playgrounds or hospitals on a lot within 300 feet of the subject property. (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. (Sections 27-358(a)(3) and (4))

(12) The currently private driveway is 30 feet in width. There are two access driveways into the special exception point of the site and the one closest to the hotel's side or real lot line was adjusted to ensure that it does not begin at a point less than twelve (12) feet from the hotel's property; as this is a corner lot, the driveway is in excess of the requirement that it begin at a point not less than 20 feet from the point of curvature – it is 48.9 feet from the point of curvature. (Section 27-358(a)(5))

(13) The existing access driveway is defined by curbing. (Section 27-358(a)(6))

(14) The sidewalk along Brightseat Road is 5 feet in width. No sidewalk exists along Medical Center Drive (formerly Arena Drive) since the property is denied access therefrom and this street does not serve pedestrian traffic (Section 27-358(a)(7))

(15) The concrete upon which the gasoline pumps sit is at least 60.9 feet from the street line of Brightseat Road and 126.7 feet from the street line of Medical Center Drive (formerly Arena Drive). (Section 27-358(a)(8))

(16) There will be no repair services offered on site. (Section 27-358(a)(9))

(17) Applicant submitted architectural elevations which depict each façade and exterior finishes and the proposed building and canopy on site will not detract from the existing hotel or other surrounding development. (Section 27-358 (a)(10))

(18) Applicant filed its request prior to January 21, 2022. It, therefore, need not provide any electric vehicle charging stations on site. ((Section 27-358(a)(11) and (12))

(19) The Special Exception Site Plan shows the topography of the subject property and abutting lots for a depth of at least 50 feet, as well as the location and type of trash enclosure, and the location of air pump stations and vacuums. There will be no exterior vending machines. (Section 27-358(b))

(20) A note should be added to the Special Exception Site Plan to state what must be done upon the abandonment of the Gas Station. (Section 27-358(c))

(21) Applicant 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 to the traveling public within the trade area established by the expert marketing witness. It will not upset the balance of land use in the area for other trades and commercial uses, since it is part of a larger parcel already developed with a hotel, the 2 acres is a mere fraction of the total land area in the I-3 Zone, and most of the surrounding properties are developed. (Section 27-358(d))

(22) Approval of the Gas Station does require the grant of a variance from Section 27-358 (a)(1) which requires the subject property to have direct vehicular access to a street with a right-of-way width of at least seventy (70) feet. Applicant is requesting a variance to allow its access to a private driveway and not the rights-of-way on which the property fronts. I find that the variance can be granted, conditionally, since: the subject property's topography prevents it from adding a new driveway on its property that has direct access to Brightseat Road, any new driveway would also be prohibited due to its proximity to the intersection, and the State prohibits any such access to Medical Center Drive (formerly Arena Drive); imposition of the requirement that there be access on the subject property would impact disproportionately on Applicant since it cannot possibly provide such access given the adjacent owner's refusal to allow the existing access to be included within the boundaries of the special exception; the variance requested is the absolute minimum reasonably necessary to overcome the unique situation noted above; the variance would not impact the General Plan or Master Plan since the use is one allowed within the Zone, one supported within an Established Community, and one that supports the surrounding industrial uses that exist or may be developed; for similar reasons, the variance would not substantially impair the use and enjoyment of adjacent properties (and the adjoining property initiated the need for the request); and there is nothing in the record that suggests the need for the variance has resulted from Applicant's own actions. (Section 27-230 (a)(1)-(6))

(23) Finally, the Technical Staff Report recommended certain conditions be imposed if the request is approved. Applicant only objects to the restriction proposed upon the height of the sign in Staff recommended condition 1.e.. Section 27-614 of the Zoning Ordinance (2019 Edition) limits the height of the freestanding sign to one "not greater than the lowest point

of the roof of any building in the employment park." Mr. Speach provided credible evidence to find that the hotel's lowest point is approximately 35 feet 10 inches and the hotel's sign is that tall. Applicant is seeking to install a 25-foot- tall freestanding sign and the recommended condition will be revised accordingly.

DISPOSITION

Special Exception 4845 and Variance 4845 are Approved, subject to the following conditions:

1. Prior to signature approval of the special exception, the Special Exception Site Plan, Tree Conservation Plan or Landscape Plan (as applicable) shall be revised, as follows, and submitted to the Office of the Zoning Hearing Examiner for review, approval and submission into the record:
 - a. Depict the entire Parcel 1 with property boundary bearings and distances and 10-foot-wide public utility easements, in accordance with Plat Book 245 page 22.
 - b. Provide information showing a fire hydrant will be provided within 500-feet of the most remote portion of the building as hose is laid by the fire department (around obstacles, corners, etc.).
 - c. Show all property boundaries from which direct access to I-95/I-495 (Capital Beltway) is denied.
 - d. Add the following notes to the General Notes on page 3 of the site plan:
 - i. "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."
 - ii. "The retail sale of alcoholic beverages from a food or beverage store

approved in accordance with Section 27-355 of the Zoning Ordinance (2019 Edition) is prohibited."

- e. The freestanding pylon sign shall not exceed 25 feet in height.
- 2. The Type 2 tree conservation plan (TCP2) shall be revised as follows:
 - a. Add the TCP2 number to the worksheet.
 - b. Complete the note on the plan stating that the off-site woodland conservation mitigation credits have been obtained; list the Liber/Folio that the certificate was recorded under.
- 3. Approval is contingent upon the submittal of the executed easement agreement that will allow Applicant to access Brightseat Road to the site. No permits may be issued for the property until a copy said easement and any required approval of the access by the District Council, Planning Board or other agency is submitted to the Office of the Zoning Hearing Examiner for inclusion in the record. Applicant shall also submit a copy of any Site Plan or revised Landscape Plan approved by the Planning Board or District Council pursuant to the requirements for development in the I-3 Zone, for inclusion in the record.

[Note: The Special Exception Site Plan Landscape Plan and accompanying plans and details are set forth in Exhibit 49(b). The Tree Conservation Plan is Exhibit 12]