

1. BZA Agenda (September, 2020)

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2. Memorandum Of Counsel-Case 20-02

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[MEMORANDUM OF COUNSEL-CASE 20-02 \(COMBINE\).PDF](#)



BOARD OF ZONING APPEALS AGENDA

Tuesday, September 1, 2020, at 6 PM

Virtual Meeting:

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- I. Call to Order**
- II. Approval of Minutes**

May 5, 2020

- III. Public Hearings**

CASE NO: 20-02 (Rehearing)

Hearing on a motion of the Board of Zoning Appeals' findings and order dated June 23, 2020 filed by Applicants Mid-Atlantic Lubes, LLC, the contract purchaser and property owner ABBEC Property, LLC, seeking modification of the findings and reopening the record in the case to allow **rehearing on the subject of the applicability of Zoning Ordinance Section 164-140 to the Applicants' request** for a special exception to operate a service station at 335 Gorsuch Road, Westminster, Maryland, in the B Business Zone. The Board shall consider further testimony from all interested parties, limited to the subjects raised in the Applicants' motion for modification and the Board's Order of July 16, 2020, including any procedural or substantive objections to Applicants' motion.

- IV. Other Business**
- V. Adjournment**

**Memorandum of Counsel-City of Westminster Board of Zoning Appeals
Case 20-02**

**To: Chairman Cramer and Members of Board of Zoning Appeals
Parties and Public, Case 20-02**
From: Eric J. Blitz, Esquire
Date: August 6, 2020

At the request of Chairman Cramer, I am providing this memorandum to review the application of §164-140 of the Zoning Code to recent special exception cases before the Board of Zoning Appeals. Note that the information provided herein is for informational purposes so it may be shared with the public and shall therefore not be construed as legal advice to the Chair, the members of the Board, parties to Case 20-02 or the public. This memorandum shall be a pre-hearing filing with the Board and thus reviewed during the hearing for admission into the record.

Summary:

§164-140 is located within Article XX, Special Provisions, of the Zoning Code. Article XX contains a series of provisions that impose additional requirements on specific uses (essential utility equipment (§164-139), telecommunications facilities (§164-139.1), ponds, lakes, stabilization and stormwater management facilities (§164-141), mutual open space (§164-142), accessory buildings (§164-147), automobile service stations (§164-149), conversion dwellings (§164-150), junkyards (§164-151), mobile homes (§164-152), multiple-family dwellings (§164-153 et. Seq.), single-family detached and semidetached dwellings (§164-154), self-service storage facilities (§164-155), indoor shooting ranges (§164-155.1), private indoor recreational facilities (§164-155.2), and firearms sales in D-B Business Zone (§164-155.3). As will be described below, the Board has previously applied §164-140 to special exception requests involving many of the Article XX uses, but not all. Article XX also includes some process and substantive requirements unrelated to specific uses, including the off-street parking mandate, special provisions for front-yard and projections into rear yards, bulk requirement modifications, setback modifications and height exceptions.

The text of §164-140 reads:

“§164-140 Distance Requirements.

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, place of worship or institution for human care.”

All proposed uses for which a special exception is sought must be compliant with the comprehensive plan and all other provisions of the zoning ordinance, which is why any number of sections of the zoning code are at issue in various cases, not just any specific special exception criteria related to a use, the general special exception requirements of §164-170, or the criteria for determination applicable to all cases in §164-169. For example, off-street parking is reviewed in every special exception case, not only to ensure the proposal is in compliance with the zoning ordinance, because Article XX specifically includes the off-street parking mandate in §164-148, and because §164-171B specifically requires it in special exception cases.

Note that §164-169B(10) makes specific reference to the spatial relationship between the proposed use and surrounding uses, including some but not all of the types of uses referenced in §164-140, as a criterion for determination in all cases, which reads:

“§164-169

* * *

B(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, places of worship and the like.”

§164-140 has been discussed in most of the special exception cases reviewed by the Board over the past 6 years, though as you will see in the list below, not all special exceptions were found to be subject to §164-140.

Code References to §164-140

1. Explicit Exceptions.

Two of the uses included within Article XX described above are explicitly excepted from the effect of §164-140. Under §164-155.3. Firearms Sales in the D-B Downtown Business Zone, subsection A(8) states that:

“Firearm sales uses shall not be subject to the additional distance requirements in §164-140 (i.e., 100 feet from any property that contains a dwelling, school, place of worship or institution for human care).”

Under §164-155.2. Private indoor recreational facilities the main body of the section notes the exception and subsection C states that:

“C. Such private facilities are not subject to the additional distance requirement in §164-140.”

Typically, an exception for one use implies the excepted provision would otherwise be applicable to that use if not otherwise excluded.

2. Multipliers or Modification for Certain Special Exception Uses.

Some sections in the zoning code use §164-140 as a reference to modify the distance requirement as a multiple of the §164-140 requirement.

A. §164-13 for the C Conservation Zone provides a multiplier for special exceptions for trap, skeet, rifle or archery ranges, veterinary clinics, animal hospitals or kennels and makes a rear yard requirement subject to the §164-140 distance requirement.

“§164-13 Special Exceptions.

D. Riding stables, as defined in § 164-3, which are noncommercial and private in use and are located in a rear yard subject to the distance requirements specified in § 164-140.

F. Trap, skeet, rifle or archery ranges, including gun clubs, provided that such use shall be five times the distance requirement specified in § 164-140.

G. Veterinary clinics, animal hospitals or kennels, with or without runways, provided that the minimum area is 10 acres for any of the aforesaid uses, and provided that any structure or area used for such purposes shall be subject to twice the distance requirements as specified in § 164-140. In any event, such structure or use shall not be located closer than 200 feet from any property line of the subject property.

***”

B. §164-42 applicable to the B Business Zone provides doubles the distance requirements using §164-140 for special exception use for swimming pools, parks and recreation areas.

“§164-42 Special Exceptions.

U. Swimming pools, parks and recreation areas, provided that such uses shall be two times the distance requirements for residential uses as specified in §164-140.

***”

C. §164-45.9 for the D-B Downtown Business Zone provides an additional distance requirement using §164-140 as the standard for swimming pools, parks and recreation areas.

“§164-45.9 Special exceptions.

A.

(24). Swimming pools, parks and recreation areas, provided that such uses shall be two times the distance requirements for residential uses as specified in §164-140.

***”

D. §164-58 for the I-R Restricted Industrial Zone and provides additional distance requirements using §164-140 as the standard for some uses, retaining it as the standard for all other uses.

“§164-58 Additional distance requirements.

All special exception uses except those provided in § 164-54A must be located three times the distance requirements specified in § 164-140; provided, however, that indoor shooting

ranges must be located five times the distance requirements specified in § 164-140. All other uses are subject to the provisions of § 164-140.”

E. §164-64.3 applicable to the N-C Neighborhood Commercial Zone applies a multiplier for swimming pools, parks and recreation areas as a special exception.

“§164-64.3 Special exceptions.

F. Swimming pools, parks and recreation areas, provided that such uses shall be two times the distance requirements for residential uses as specified in § 164-140.

***”

3. In some instances, the code uses §164-140 to apply its distance requirement to permitted uses.

A. In §164-12 applicable to the C Conservation Zone, the distance requirement of §164-140 is applied to Agriculture for greenhouse heating plant or any building or feeding pens in which animals are kept.

B. In §164-19 applicable to the A Agricultural Residential Zone, the distance requirement of §164-140 is applied to Agriculture, including commercial or non-commercial nurseries and greenhouses (subsection B) and riding stables (subsection I).

C. In §164-61 applicable to the I-G General Industrial Zone, the distance requirement of §164-140 is applied to Agriculture (subsection U).

Recent BZA Cases Addressing §164-140.

1. Case 19-03 involved a special exception for a service station (an Article XX use and the same use as in Case 20-02) in the B-Business Zone. The staff took the position that §164-140 applied to the applicant’s intended use pursuant to §164-158. The Board found that §164-140 applied to the service station use and found that it met the 100’ requirement.

2. Case 19-01 involved a special exception for a gun shop (an Article XX use) in the D-B Downtown Business Zone, so the Board noted that §164-140 did not apply due to the exception provided in §164-155.3A (8).

3. Case 18-06 involved a special exception for a conversion dwelling (an Article XX use) and §164-140 was not applied to the proposed use by the Board. The staff report stated that §164-140 was applicable pursuant to §164-158 but argued that “It would appear that this provision is not applicable to a proposed conversion dwelling use, since a conversion dwelling use is itself a residential use. It would seem that this provision is assumed to refer only to special exceptions that are non-residential. The Board may wish to discuss this principle, if needed.”

4. Case 18-02 involved a special exception for an indoor dog training and event facility use to be located in the I-R Restricted Industrial Zone. Staff took the position that because an indoor dog training facility and

event facility was not a use listed under Article XX, §164-140 did apply. The Board did not apply §164-140, but made no specific finding related to it.

5. Case 18-01 involved a special exception for a day care facility (not an Article XX use) to be located in the R-10,000 Residential Zone. Staff took the position in their report that §164-140 did apply to the use in the case pursuant to §164-158 but the Board found that it did not apply. Specifically, the Board found in Finding 17 that:

“17. The Board finds that the Applicant’s proposed use does not need to meet the requirements of §164-140 which imposes a 100’ distance requirement from any other residential lot. That section is inapplicable to the Applicant’s special exception use and while there is some ambiguity as to the scope of §164-140, a plain reading of the intent of that section could not be construed to apply to the Applicant’s use.”

6. Case 17-03 involved a special exception for a conversion dwelling (an Article XX use) to be located in the R-7,500 Residential Zone. The staff took the position in their staff report that §164-140 did not apply to a conversion dwelling, writing:

“Per § 164-158, the proposed use is subject to § 164-140, Distance requirements, which states: *Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.*

It would not appear that this provision is applicable to a conversion dwelling use, since a conversion dwelling use is itself a residential use. It would seem that this provision is assumed to refer to only special exceptions that are non-residential themselves.”

The Board did not apply §164-140 to the conversion dwelling special exception request in this case, but did not elaborate on why.

7. Case 17-01 involved a special exception for a drive-through use (not an Article XX use) in the PRSC Planned Regional Shopping Center Zone. The Board found that §164-140 was applicable to the special exception use requested and the staff concurred in their report (again citing §164-158 as the referring section).

8. Case 16-06 involved a special exception for a lunchroom restaurant (not an Article XX use) in the I-R Restricted Industrial Zone. The staff took the position that §164-140 applied to the special exception use but that the proposed use met the 100’ requirement. The Board did not make a specific finding about §164-140.

9. Case 16-03 involved a special exception for a private indoor recreational facility (an Article XX use) in the I-R Restricted Industrial Zone. This case is interesting because such a use is listed in §164-54K (triggering the requirement for a special exception) and despite the §164-58 requirement that §164-140 apply, §164-155.2 provides its own very explicit (cited twice) exception to the §164-140 requirement, regardless of the zone. The Board found that §164-140 did not apply pursuant to §164-155.2C. Staff had concurred in their staff report with the conclusion that §164-140 did not apply due to that exception.

10. Case 16-02 involved a special exception for an automobile service station (an Article XX use and the same use category as in Case 20-02) in the B-Business Zone and the Board found that §164-140 applied in that case. In that case staff took the position that §164-140 applied to special exception uses and that the applicant's proposal in the case did not meet the requirements, as the service station portion (there was also a restaurant) was less than 100' from a lot in a residential zone. The Board found §164-140 to be applicable but found that the 100' requirement was met.

11. Case 15-01 involved a special exception for a telecommunications facility (an Article XX use) in the PI-Planned Industrial Zone. The staff took the position that §164-140 applied to the special exception (after a discussion of the convoluted ordinance structure associated with distance requirements in the staff report) and then found that the applicant's proposal met the 100' requirement. The Board approved the special exception but did not make a specific finding involving §164-140.

PDF Files of the staff reports and findings of the Board in the above-referenced cases are included as attachments to this memorandum.

BZA 15-01 Staff Memo

Re: An application by Cellco Partnership (Verizon Wireless) of 9000 Junction Drive, Annapolis Junction, Maryland 20701 for approval of a special exception to install a telecommunications facility including a 150-foot tall monopole within a 50-foot by 50-foot fenced compound at 1231 Independence Way, Westminster, pursuant to Article XX, Special Provisions, Section 164-139.1, Telecommunications Facilities, of the City Code. [The application was revised by the applicant.]

To: City of Westminster Board of Zoning Appeals

From: William A. Mackey, AICP, DCPD Director

Date: October 26, 2015

I. History and Facts

In April 2015, an application was submitted to the Board of Zoning Appeals (BZA). In correspondence dated September 14, 2015, the applicant explains from the applicant's point of view the events that led to a revised application for BZA review on November 3, 2015. Attachments to the correspondence from the applicant include NEPA and FAA certifications. Those certifications are included by the applicant in the revised prehearing statement. The correspondence is attached to this memo for your information.

Both initial and revised applications are for property at 1231 Independence Way. Zoning is P-I Planned Industrial. The SDAT online records indicate the property is owned by Advanced Thermal Batteries, Inc.

II. Required Notice

On October 5, 2015, a Notice of Hearing was sent via certified mail to the property owner and adjoining property owners. On October 12, 2015, a Notice of Hearing appeared in the *Carroll County Times*. On October 16, 2015, the property was posted with a Zoning Notice sign. On October 26, 2015, a copy of the agenda was posted on the City's website. On October 27, 2015, a Notice of Hearing will appear in the *Carroll County Times*. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meeting Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to the § 164-166 E.

Note: This memo presents City Code provisions related to review of special exceptions from required to optional, as well as descending in scale. Thus, the first section covers general conditions to be met by all special exceptions. The next covers requirements for all telecommunications facilities. The next covers specific findings related to a proposed facility, and finally some general criteria that the Board *may* use.

This order differs from the order chosen by the applicant in the Revised Prehearing Statement, dated October 1, 2015. A specific order is not required by Code. City staff comments appear in blue below.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered “to hear and decide special exceptions as such exceptions are authorized by this chapter.” Pursuant to § 164-170 A., “The Board may grant a special exception when it finds from a preponderance of the evidence of record that:”

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The 2009 Comprehensive Plan sets for the overarching goal under Goal F6 to: “Encourage the provision of state-of-the-art technology and communication facilities to deliver effective and innovative solutions that meet business, resident, and government needs.”

The applicant’s proposal would appear to support this goal of the 2009 Comprehensive Plan.

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

The telecommunications facility is proposed to be fenced and gated for security. There are no known concerns related to health and safety specifically associated with this proposed facility.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues, since after construction the facility is proposed to be unstaffed. The reported limits of disturbance are approximately 11,995 square feet, per the submitted plans. A storm water management review is required for limits of disturbance over 5,000 square feet.

As part of the requirements under § 164-166 F., “The Board shall refer all petitions for special exceptions to the [Planning and Zoning] Commission for its report and recommendation. Thereafter, the Commission may, in its discretion, issue a report and recommendation.” Prior to site plan submission for to Commission, storm water management issues must be addressed.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of review, the neighborhood to be identified for the special exception review could either include all of the P-I and I-R zoned areas located north of Old Bachmans Valley Road within the City of Westminster, or it could potentially be limited to the nine noticed properties. Please see attached sub-exhibit that indicates the location within the larger area noted above.

The facility is proposed to be located inside an industrial area. A telecommunications facility would not appear to be detrimental to the character of an industrial area. The applicant has submitted images of expected future appearance of a single level of antennas on a monopole.

The Board may wish to discuss monopole appearance from non-industrially zoned land. Also, the future appearance of the monopole with multiple levels of antennas is not addressed.

Additionally, per § 164-65 (reprinted below) one purpose of the P-I zoning district is to promote aesthetics as a showcase “generally open to constant and extensive public viewing in the City.” The proposed site is immediately adjacent to Carroll County’s Department of Social Services.

§ 164-65 Purpose.

It is the purpose of the P-I Planned Industrial Zone to provide a parklike setting for a community of industries wishing to mutually maintain aesthetically pleasing appearances and operations having no nuisance factors as a means of protecting investments within the zone and reducing the impact of industrial uses on surrounding zones. Tracts within the district are to be planned, promoted and developed for industries within the protection of performance standards herein provided.

A. The following objectives are sought in providing for the one or more types of industrial zoning in the Planned Industrial Zone:

(1) To provide a more attractive and varied showcase location on tracts of land generally open to constant and extensive public viewing in the City than would be possible through the strict applications of industrial Euclidean zonal district requirements.

(2) To encourage developers to use a more creative approach in the development of land.

(3) To encourage more efficient allocation and maintenance of common open space in industrial areas through private initiative.

(4) To encourage variety in the physical development patterns of industrial areas.

B. The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application.

(3) The standards set forth for each particular use for which a special exception may be granted have been met.

Requirements are set forth for the particular use. The specific requirements are presented below.

IV. Requirements for telecommunications facilities

Pursuant to § 164-139.1 A, “Telecommunications facilities shall meet the following requirements:”

- (1) An antenna and a related unmanned equipment building or cabinet may be installed on privately owned land on a rooftop of buildings which are at least 30 feet in height. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one-family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building, provided that it and all other roof structures do not occupy more than 25% of the roof area.

An antenna and related unmanned facilities are not being proposed for location on a building.

- (2) Telecommunications antennas may be attached to a freestanding monopole on privately owned land. A freestanding monopole, including antenna structure for a telecommunications facility, is permitted up to 199 feet in height with a setback as provided in Subsection A (10) hereof.

Antennas are being proposed to be attached to a 150-foot tall monopole on privately owned land.

- (3) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable setback standards of the zone in which the property is classified.

An unmanned equipment building is proposed as a 10-foot by 16-foot building, which is indicated with an overall height of just under 12 feet, noting that the height of grade varies. Additional items such as a cable bridge, MESA® cabinet, and meter center are also included on the submitted plans.

The zoning of the property is P-I Planned Industrial. Pursuant to §164-69 B (3), "The yard, landscape and distance requirements shall be the same as those contained in §§ 164-55, 164-57 and 164-58."

Per § 164-55, side yard width and rear yard depth are each 30 feet. Per § 164-57, a landscaped edge is required along any residential district or external right-of-way. Proximity and a surface parking lot are assumed. These conditions do not exist within close proximity to the proposed facility and use.

The dimensional requirements include a complex reference. Per § 164-69 B (3), special exceptions in P-I are referred to § 164-58 in I-R for distance requirement. In § 164-58, all special exception uses except those listed in § 164-54A are subject to a multiplying of distance requirements in § 164-140. However, § 164-54 A is itself a list of selected permitted uses in § 164-41 A of the B Business Zone. At its close, § 164-58 concludes: "All other uses are subject to the provisions of § 164-140." At this time, since there is a complex reference separated by time and amendments, the last provision appears to be the most reasonable standard to apply. Please see Section VI in this memo below.

- (4) All antennas shall be located and designed, including materials, color and texture, so as to minimize visual impact on surrounding properties and as seen from the public streets.

The applicant submitted images of the expected future appearance of a single level of antennas on a monopole. The Board may wish to discuss monopole appearance from non-industrially zoned land. Also, the future appearance of the monopole with multiple levels of antennas is not addressed.

The proposed site is immediately adjacent to Carroll County's Department of Social Services (DSS). There are no images of the appearance of the monopole from the side parking areas. No perimeter landscaping is indicated, and it's unclear that the terrain would actually obscure the monopole base.

- (5) No signs are permitted in connection with any telecommunications facility.

The proposed facility does not appear to include any proposed signage, per plans revised 08-27-15.

- (6) No lights or other illumination devices are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the City. Any security lighting must be down shielded to prevent light pollution on adjoining properties.

The proposed facility does not appear to include any proposed lighting, per plans revised 08-27-15.

- (7) All monopoles erected as part of a telecommunications facility must maintain or accommodate at least three telecommunications carriers; provided, however, that a monopole or other support structure designed or engineered to accommodate fewer than three telecommunications carriers may be approved by the Board as provided in § 164-139.1.B (8).

The submitted plans indicate the proposed monopole would accommodate 12 antennas on one level. Five antennas are identified for Verizon. Additional levels of antennas are not indicated. Testimony by applicant's engineers would be expected to address sufficiency for facility sharing.

- (8) No more than one monopole is permitted on a lot or parcel of land, and no two monopoles may be located within 1,000 feet of each other.

A monopole is not located on the property. There are no other known monopole antennas within 1,000 feet of the proposed monopole site, which are located in the City of Westminster, Maryland.

- (9) Every freestanding monopole or support structure, and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of the owner of the facility when the telecommunications facility is no longer in use by any telecommunications carriers.

The removal of the telecommunications facility is addressed under § 164-139.1B (12) (see below).

- (10) A monopole, tower or other support structure must be located at a distance of 1/2 foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

Adjoining properties are zoned I-R Restricted Industrial and P-I Planned Industrial. The monopole is proposed to be 150 feet in height. The closest property line to the proposed monopole is 90 feet.

V. Findings for telecommunications facilities

Pursuant to § 164-139.1 B, "Telecommunications facilities may be permitted upon a finding by the Board, in addition to the findings required in Article XXII of this chapter, that:"

- (1) The application complies with all of the standards contained in § 164-139.1A.

The Board is encouraged to discuss the qualitative standards, such as § 164-139.1A (4).

- (2) The location selected is necessary for the public convenience and service.

The applicant submitted documentation related to the levels of service for the surrounding area.

- (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.

Wherever feasible, the City prefers new facilities to be collocated on existing water towers; however, there are currently no known telecommunications or water towers located in the City near the airport.

- (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of an historic district or more than 300 feet from the nearest boundary of the environmental setting of an historic resource that is not within an historic district.

The selected location is not located within 300 feet of the Westminster Historic District and does not appear to be located within 300 feet of any known historic resource not within an historic district.

- (5) The location selected for a monopole is suitable for the collocation of at least three telecommunications antennas and related unmanned cabinets or equipment buildings, and the facility is designed to accommodate at least three antennas. The holder of a special exception may not refuse to permit the collocation of two additional antennas and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such collocation without just cause may result in revocation of the special exception.

The submitted plans indicate the proposed monopole would accommodate 12 antennas on one level. Five antennas are identified for Verizon. Additional levels of antennas are not indicated. Testimony by applicant's engineers would be expected to address sufficiency for facility sharing.

- (6) The Board must further find that any monopole, tower, support structure, equipment building or cabinet is located in conformity to the applicable setback standards of the zone and those provided in § 164-139.1A (10).

The facility, equipment and associated structures, including the required perimeter fencing, are proposed to be located outside of the required 30-foot setbacks, per plans revised 08-27-15. The monopole is proposed to be 150 feet in height. Setbacks are addressed under § 164-139.1A (10).

- (7) The Board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures, does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10%. The Board must also find that the structure minimizes visual impact on surrounding properties and as seen from the public street.

The facility is not proposed on a building. Visual impacts are addressed in § 164-139.1A (4) above.

- (8) The Board must also find that a freestanding monopole or other support structure is proposed to hold no fewer than three telecommunications carriers. The Board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or the applicant establishes that collocation on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

The applicant presented documentation to show there are no other existing water towers or other telecommunications towers located north of the towers at McDaniel College in City of Westminster.

- (9) The Board must find that the operation of the proposed telecommunications facility will not interfere with public safety telecommunications. Any application for a special exception shall be accompanied by an intermodulation study which provides a technical evaluation of all proposed transmissions and indicates all potential interference problems. Prior to the introduction of any new service, the owner/operator shall provide the City at least 10 calendar days' notice in advance of such service and allow the City to monitor interference levels during the testing process.

The applicant submitted a Collocation Interference Analysis Report to address potential interference with the City of Westminster public communications system mobile receivers as well as other issues.

- (10) An applicant for a special exception for a telecommunications facility shall provide with the application a report from a qualified and licensed professional engineer which describes the tower, monopole or support structure height and design, including cross sections and elevations; documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas; describes the capacity of the tower or monopole, including the number and type of antennas that can be accommodated; documents what steps the applicant will take to avoid interference with established public safety telecommunications; includes an engineer's stamp and registration number; and includes other information necessary to evaluate the request.

Plans were submitted and are on record with the seal of Marc A. Marzullo, Professional Engineer, Maryland License No. 17913, Expiration Date 04/03/2016. These plans indicate a single monopole and its associated support infrastructure. An Interference Analysis Report was submitted by Paul Dugan, Professional Engineer, Maryland License No. 24211. The purpose is to address potential interference to public communications systems and any future collocated transmitter or receiver.

- (11) Prior to granting any requested special exception for a telecommunications facility, the Board may require a visual analysis demonstration for any proposed monopole, tower or support structure.

The applicant submitted images of the expected future appearance of a single level of antennas on a monopole. The Board may wish to discuss monopole appearance from non-industrially zoned land. Also, the future appearance of the monopole with multiple levels of antennas is not addressed.

The proposed site is immediately adjacent to Carroll County's Department of Social Services (DSS). There are no images of the appearance of the monopole from the side parking areas. No perimeter landscaping is indicated, and it's unclear if the terrain would actually obscure the monopole base.

- (12) After notice and hearing, the Board may revoke the special exception for any telecommunications facility which has not been in use for 12 consecutive months, and the owner of the facility shall remove it at the owner's cost within 90 days after revocation of the special exception by the Board.

This sub-section is referenced in § 164-139.1A (9) (see above).

VI. Distance Requirements

Pursuant to § 164-140, "Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care."

The Carroll County Department of Social Services (DSS) is located on the lot immediately east of and adjacent to the proposed monopole. The proposed monopole would be located approximately 113 feet from the shared property line. Celebree Learning Center is located at 1235 Tech Court. The proposed monopole is separated from the Celebree site by an intervening street and lot which exceed 100 feet.

VII. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*
 - (1) *The number of people residing or working in the immediate area concerned.*
 - (2) *The orderly growth of a community.*
 - (3) *Traffic conditions and facilities.*
 - (4) *The effect of such use upon the peaceful enjoyment of people in their homes.*
 - (5) *The conservation of property values.*
 - (6) *The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.*
 - (7) *The most appropriate use of land and structure.*
 - (8) *Prior decisions of the courts regarding such matters.*
 - (9) *The purpose of the regulations as set forth in this chapter.*
 - (10) *The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.*
 - (11) *Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.*

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

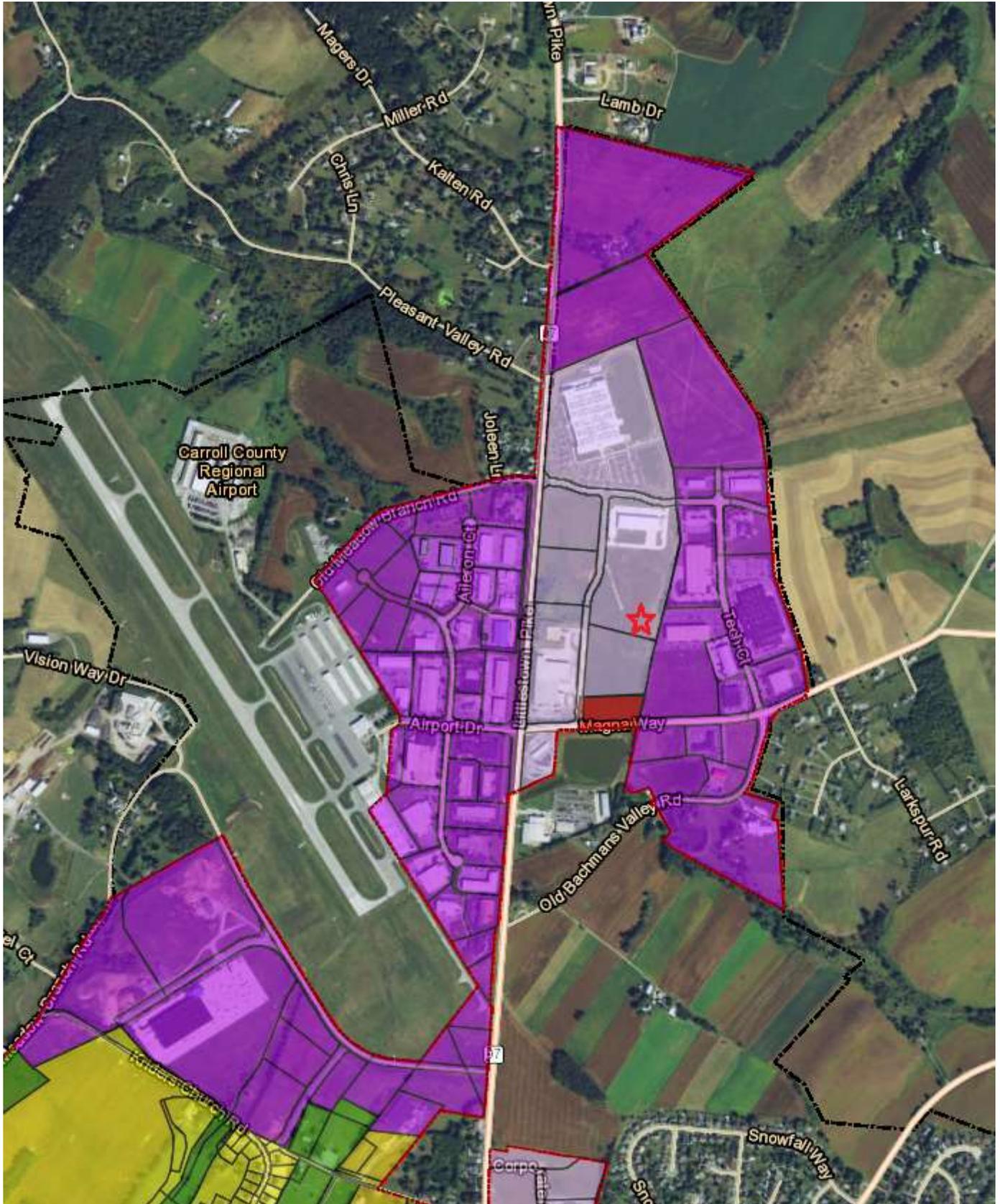
VIII. Conclusion and Additional Consideration

Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

City staff recommend that monopole applicants utilize the shared facilities available on existing water towers within the City, whenever possible. Additionally, the City is preparing to require that all new telecommunications facilities utilize City fiber as part of their installations within City of Westminster.

Attachments

- sub-exhibit map related to § 164-170 A. (2)(c)
- correspondence from applicant, dated 9/14/2015



Legend

Corporate_Limit
 Corporate_Limit


 I-R ~ Restricted Industrial
 P-I ~ Planned Industrial
 B ~ Business

 Proposed Facility
 1231 Independence Way

T 410.494.6271
F 410.821.0147
amrosenblatt@venable.com

September 14, 2015

Via Email and First Class MailChristopher N. Jakubiak
Zoning Administrator
Community Planning & Development
City of Westminster Government
56 W. Main Street
Westminster, MD 21157Re: Case No. 15-01
Special Exception for telecommunications facility
1231 Independence Way

Mr. Jakubiak:

As you may recall, the above-referenced petition for special exception was originally set for a hearing before the Board of Appeals on April 28, 2015. On April 10, 2015, undersigned counsel was contacted by Jack Lyburn, Director of Economic Development for Carroll County, who informed me that the City of Westminster, Carroll County and State of Maryland economic development leaders were jointly opposed to the location of the telecommunications tower indicated on the petition for special exception. Mr. Lyburn requested that the tower be relocated to the southeast corner of the property to calm the concerns of a thermal battery company (ATB) proposing to operate in the vacant warehouse building on the northern end of 1231 Independence Way. According to Mr. Lyburn, relocating the tower would be a “win win” situation for Verizon, ATB, and general economic development in the City and County. Mr. Lyburn also offered to cover any costs associated with the delay in this hearing, so please contact him for reimbursement of any advertising costs incurred in re-instituting this matter.

After much discussion, Verizon determined that it would comply with Mr. Lyburn’s request to relocate the tower to the southeast corner of the property. While we initially believed that this matter would be scheduled for the Board’s May 2015 hearing, on April 21, 2015, you stated via the attached email that the board members decided not to schedule a hearing until the NEPA and FAA certifications for the revised tower location are submitted. I am now writing because we have just received our updated NEPA certification and as with the prior location, both the FAA and NEPA certifications support the tower in its proposed location (see attached certifications).

Christopher N. Jakubiak
Zoning Administrator
September 14, 2015
Page 2 of 2

When we spoke last week, you indicated that this matter would be set for the November 3, 2015 hearing before the Board and I am writing this letter to confirm that the petitioner will submit all necessary materials to proceed on November 3, 2015. Pursuant to Rule 8 of the Board's Rules of Practice and Procedure, I will provide an amended prehearing statement and associated documentation at least 15 days prior to the November 3 hearing date. In fact, as the materials are all in my possession, the prehearing statement will be filed shortly to ensure that there is no further delay in this matter.

Thank you for your time and consideration. Please confirm that the hearing on the petition for special exception will be properly advertised and will proceed on November 3, 2015,

Very truly yours,



Adam M. Rosenblatt
Counsel for the Petitioner

cc: William Mackey

Rosenblatt, Adam M.

From: Chris Jakubiak <CJakubiak@westgov.com>
Sent: Tuesday, April 21, 2015 5:57 AM
To: Rosenblatt, Adam M.
Subject: Re: Special Exception hearing on April 28

I cannot confirm May 12th. The board members decided not schedule a hearing until the NEPA and FAA certifications are submitted.

Sent from my iPhone

On Apr 20, 2015, at 2:58 PM, Rosenblatt, Adam M. <AMRosenblatt@Venable.com> wrote:

Just trying to confirm our hearing date, please let me know if May 12 is confirmed. Thank you,

Adam M. Rosenblatt, Esq. | Venable LLP
t 410.494.6271 | f 410.821.0147 | m 410.294.9430
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

AMRosenblatt@Venable.com | www.Venable.com

From: Rosenblatt, Adam M.
Sent: Thursday, April 16, 2015 4:17 PM
To: 'Chris Jakubiak'
Subject: RE: Special Exception hearing on April 28

Per our conversation this afternoon, I am attaching a letter regarding a continuance of the April 28 hearing. Please confirm the new hearing date at your earliest opportunity, as well as the Board's understanding that NEPA and FAA certifications for the revised location will not be obtained by the May 12 hearing as they require approximately 45-60 days. Thank you,

Adam M. Rosenblatt, Esq. | Venable LLP
t 410.494.6271 | f 410.821.0147 | m 410.294.9430
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

AMRosenblatt@Venable.com | www.Venable.com

From: Chris Jakubiak [<mailto:CJakubiak@westgov.com>]
Sent: Monday, April 13, 2015 1:38 PM
To: Rosenblatt, Adam M.
Cc: Chris Jakubiak
Subject: Re: Special Exception hearing on April 28

Adam. Called your office and left a VM on your mobile. Here is my cell 410-808-0683.

Sent from my iPhone

On Apr 13, 2015, at 11:05 AM, Rosenblatt, Adam M. <AMRosenblatt@Venable.com> wrote:

Mr. Jakubiak,

By: Electronic Mail

August 31, 2015

Mr. Jinay Vasocu
TowerCom VI LLC
101 Colony Park Drive
Cumming, GA 30040

Re: Littleton Pike Site
Westminster, Carroll County, MD
DEA No. 21505009

Dear Ms. Vasocu:

Dynamic Environmental Associates, Inc. (DEA) has completed a NEPA Assessment for the above referenced site, as authorized by you, and we are submitting the enclosed report for your use.

No NEPA issues were identified as a result of this work and no further assessment is being recommended at this time.

We trust that this information is suitable for your needs and we are available to discuss this project, at your convenience.

Very truly yours,
**Dynamic Environmental
Associates, Inc.**



David A. Jermakian
President

c: Ryan Dear, Site Link Wireless

21505009 – Transmittal Letter



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 2601 Meacham Boulevard
 Fort Worth, TX 76193

Aeronautical Study No.
 2015-AEA-2577-OE

Issued Date: 06/01/2015

Chip Bulloch
 Tower Com VI, LLC
 101 Colony Park Drive
 Suite 400A
 Cumming, GA 30040

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower Littleton Pike
 Location: Westminster, MD
 Latitude: 39-36-32.18N NAD 83
 Longitude: 76-59-39.85W
 Heights: 766 feet site elevation (SE)
 150 feet above ground level (AGL)
 916 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

To coordinate frequency activation and verify that no interference is caused to FAA facilities, prior to beginning any transmission from the site you must contact FAA Potomac TRACON Com SSC at 540-349-7403.

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/ lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 12/01/2016 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.

- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (817) 321-7755. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2015-AEA-2577-OE.

Signature Control No: 251429266-253571052

Debbie Cardenas
Technician

(DNE)

Attachment(s)
Frequency Data

cc: FCC

Frequency Data for ASN 2015-AEA-2577-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
698	806	MHz	1000	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W

BZA 16-02 Staff Memo

Re: An application by Sheetz, Inc. of 5700 Sixth Avenue, Altoona PA 16602, for approval of a special exception for a Service Station use and a special exception for an Automobile Car Wash use at 1023 Baltimore Blvd, Westminster MD, pursuant to Article VIII: B-Business Zone, Section 164-42.S Special exceptions, Section 164-42.F Special exceptions, Section 164-149 Automobile service station, Section 164-3 Definitions and word usage, and Article XXII of the City Code.

To: City of Westminster Board of Zoning Appeals

From: Bill Mackey, AICP, Planning Director

Date: February 26, 2016

I. History and Facts

In January 2016, an application was submitted to the Board of Zoning Appeals (BZA), for two special exception uses at 1023 Baltimore Blvd. The zoning is B Business, and SDAT records indicate the property is owned by K&G Properties, LLC, at 11 Antrim Boulevard, Taneytown MD 21787-2201.

II. Required Notice

On February 5, 2016, Notices of Hearing were sent via certified mail to adjoining property owners. On February 7, 2016, a Notice of Hearing appeared in the *Carroll County Times*. On February 8, 2016, a copy of the agenda was posted on the City's website. On February 12, 2016, the property was posted with a Zoning Notice sign. On February 17, 2016, a Notice of Hearing was sent via certified mail to the property owner. On February 21, 2016, a Notice of Hearing appeared in the *Carroll County Times*. These notices met the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meetings Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to the § 164-166 E.

[An email from the owners of the neighboring, residentially-zoned property is attached for your reference.](#)

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The *2009 Comprehensive Plan* includes a variety of goals related to economic development and annexation including Goal M3: “While recognizing infill development is the preferred method of growth, plan for the expansion of City boundaries to accommodate growth in the future.”

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

The proposed automobile service station is expected to use water at the rate of 0.18 gallons per day per square foot of gross floor area. For the subject proposal this would result in about 1,180 gallons per day. The proposed car wash has an expected water usage rate of about 4.9 gallons of water per day per square foot of gross floor area without wastewater recirculation equipment. For the subject proposal this would result in about 4,600 gallons per day. Since there is limited water in the City, the proposed car wash is not recommended for approval by staff. The Board may wish to request testimony regarding recirculation equipment and its effect on water use.

Prior to site plan approval by the City and County, public roads, storm drainage, stormwater management and related issues must be addressed. Site plan approval is required by Planning and Zoning Commission. Permitting and construction cannot begin without site plan approval.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of review, staff recommends the neighborhood as immediately vicinal properties (see attached map). The subject property is connected to the City via the MD 140 right-of-way. Neighboring properties located to the east and west side of the site are zoned Business by Carroll County. The property to the south is zoned R-40,000 by Carroll County. The property to the north is zoned I-R (Restricted Industrial) by Carroll County.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

The specific standards for automobile service stations are reviewed under Section V below. There are no specific standards for the car wash special exception use included in the zoning regulations.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*

B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*

(1) The number of people residing or working in the immediate area concerned.

(2) The orderly growth of a community.

(3) Traffic conditions and facilities.

(4) The effect of such use upon the peaceful enjoyment of people in their homes.

(5) The conservation of property values.

(6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.

(7) The most appropriate use of land and structure.

(8) Prior decisions of the courts regarding such matters.

(9) The purpose of the regulations as set forth in this chapter.

(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

(11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Specific requirements for automobile service stations under §164-149

A. An automobile service station may be permitted upon a finding by the Board, in addition to the findings required in Article XXII of this chapter, that:

1. The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

2. The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of public assembly.

The proposed special exception is on MD 140. Review and permitting by Maryland State Highway Administration (SHA) will be required. It is presumed that application of State standards by SHA will address any concern.

3. The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering the service required, the population, character, density and number of similar uses.

There are no known concerns by staff with specific bearing on this site, regarding these matters.

4. The evidence of record establishes that for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City and that the use at the location proposed will not result in a multiplicity of proposed uses. In the absence of convincing evidence to the contrary, the following shall constitute lack of probability of a reasonable public need:

- a) An automobile service station within one mile on the same side of the road, except at intersections.

There is a 24-7 Fuel Market located less than a mile east of the proposed site along eastbound MD 140. The 24-7 Fuel Market site is located outside of the City of Westminster's municipal boundaries. The Board may wish to rule on whether or not City spacing requirements apply for sites located outside the City.

- b) The presence of two service stations within the four quadrants of an intersection, including 1/2 mile from the center of the intersection in any direction.

The site for the proposed special exception use is not at a four-quadrant intersection. There is Wawa located approximately 2,400 feet away, more or less, which is the single occupant at its intersection. Please, note that the applicant and the parties who filed entries of appearance have submitted various studies and other materials related to this specific requirement.

5. The proposed use will be conducted upon a lot having a minimum area of 20,000 square feet, provided that this size is adequate to meet the necessary services and the setback and buffering requirements, and a minimum lot frontage of 120 feet on a public road shall be required for each automobile service station site.

The requested special exception use is proposed to be located on the eastern half of the property owned by K & G Properties, LLC. The eastern half of the property is greater than 20,000 square feet in area, and proposed frontage for the special exception location exceeds 120 feet in length.

§164-45 Dimensional Requirements, require the following:

§164-45.A. (1) Floor area ratio: 2.0. The total building floor area cannot be greater than twice the total area of the lot. The proposed convenience store and other facilities do not exceed twice the total lot area.

§164-45.B. (1) (a) Front: 30 feet or equal to the setbacks of immediately adjacent buildings, whichever is less, from the public street. The proposed fuel island structural supports exceed 80 feet from public right-of-way.

§164-45.B. (1) (b) Side: where the side line is along an alley or public right-of-way, 10 feet or equal to the setbacks of immediately adjacent buildings, whichever is less. There is no side alley or public right-of-way.

§164-45.B. (1) (c) For parking uses: five feet from the right-of-way or adjacent lots. This is not dimensioned.

§164-45.B. (1) (d) From residential districts: 30 feet. The closest proposed building is shown with an 85-foot setback from the rear property line. This is the only side of the property adjacent to a residential district.

Please, note the plat indicates the facility will have shared access with a future development on the same property. Section VII includes sample language for a condition to address the shared access.

6. The lot shall contain landscaping on a minimum of 10% of the site area.

The current proposal would allow enough land on site to meet the 10% requirement. Additionally, all site plan proposals must meet requirements in the City's adopted Landscape Manual as part of the site plan stage. The applicant will be required to submit plans showing proposed landscaping.

B. In addition, the following requirements shall be met:

1. When such abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted Master Plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, slightly, solid fence not less than five feet in height, together with a three-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Screening shall not be required on street frontage.

This site may border an institutional premise on the side, if the Urgent Care Center were to be considered an institutional use by the Board. As with all neighboring properties of this proposal, the Urgent Care Center is not in the City.

Also, the proposed site does abut residentially zoned land along its rear property line. Testimony could include how the developer will effectively screen proposed uses on the site from adjoining residential property. A letter from the owners of the adjoining residential property is attached.

2. Signs, products displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways shall be prohibited.

The applicant submitted a *plat to accompany special exception request*; however, a site plan has not been submitted yet. The Board may wish to place conditions on the proposed use that relate to these matters.

3. Lighting shall be designed and controlled so that any light source, including the interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways or parking areas. Such lighting shall not shine on or reflect on or into residential structures.

Preferred lighting is detailed in the *Development Design Preferences* manual for the site plan stage. The Board may wish to place conditions on the proposed use that relate to these matters.

4. All gasoline service station developments shall meet City off-street parking standards to ensure the safe movement of vehicles and pedestrians. The arrangement of structures, islands, driveways, parking and landscaping shall be designed so as to ensure maneuvering ease, to serve the community and not to adversely affect adjacent properties.

Per Article XVI §164-111.C Automobile service stations, require, 2 spaces per bay and 1 space per employee shift. Also, the food store would be required 1 space per 200 square feet of floor area devoted to customer service. With 12 dispensers and 6,558 square feet of convenience store, the maximum required parking for these items could be considered 24 for the dispensers and 33 for the store. With an estimated 66 parking spaces cited in the submittal, this allows for 9 employees. All site plan proposals must meet all requirements in §164-111 as part of the site plan stage.

5. Driveways shall be designed and located to ensure a safe and efficient movement of traffic on and off the site from the lane of traffic nearest the curb. The design, location and construction of all vehicular access driveways shall be in accordance with the applicable specifications and standards of the Department of Public Works.

The standards of the Department of Public Works for driveways are applied at the site plan stage. The proposed special exception is on MD 140. Review and permitting by SHA will also be required.

6. Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line, and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall normally be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb- or street line unless the Planning Director determines that those configurations would present an unreasonable risk to vehicular and pedestrian traffic and grants a modification of those requirements which would eliminate or minimize such risks.

Proposed gasoline pumps/canopy supports, according to the *plat to accompany special exception request*, are proposed to be located 82 feet from the road. The required front setback is 30 feet. This would locate the proposed gas pumps/canopy supports about 50 feet behind the required front setback. Proposed entrances are greater than 20 feet apart. The east access point of the site is not perpendicular to the curb/street line.

The proposed special exception is on MD 140. Review and permitting by SHA will be required. It is presumed that application of State standards by SHA will address any concern.

7. Vehicles shall not be parked so as to overhang in the public right-of-way.

The *plat to accompany special exception request* does not propose parking in a location adjacent to the public right-of-way.

VI. Additional requirements under §164-140

Pursuant to § 164-140, the following distance requirement is applied to special exception uses.

§ 164-140 Distance requirements.

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.

The proposed automobile service station use including its retail sales building is more than 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care. The proposed car wash special exception use is less than 100 feet from a lot in a residential zone. The car wash does not meet the provisions of § 164-140 *Distance requirements*.

VII. Conclusion

Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

City staff recommends that the Board consider approval of the special exception for an automobile service station. As with prior approvals for automobile service stations (see attachments), the Board may wish to include one or more of the following conditions:

- “The Applicant is bound by all of the testimony and evidence of record in implementing this decision, and shall also comply with any additional conditions, restrictions or requirements of its site plan approval (Wawa).”
- “The Applicant is bound by all of the testimony and evidence of record in implementing this decision, including, but not limited to, its stated hours of operation, and shall also comply with any additional conditions, restrictions or requirements of its site plan approval (BJ’s).”

- “... subject to the condition that the Applicant obtain all required federal, state and local permits and comply with all applicable laws and regulations relating to the operation of a fueling facility at this location (Giant).”
- “The City’s Planning and Zoning Commission shall consider the overall impact of the proposed fueling facility on traffic patterns within the site as well as adjoining interconnected sites ... (Weis).”

City staff does not recommend approval of the proposed car wash, due to the burden on public facilities and the proposal’s failure to meet the distance requirements set forth under § 164-140 of the City Code.

Attachments

- email submitted by the Lockhard family
- sub-exhibit map related to § 164-170 A(2)(c)
- signed decision for BZA Case No A00-4 (Wawa)
- signed decision for BZA Case No A01-6 (BJ’s)
- signed decision for BZA Case No A10-1 (Giant)
- signed decision for BZA Case No A13-05 (Weis)

Sent: Tuesday, February 16, 2016 7:57 PM
To: Andrew Gray
Subject: From Lockard property owners (ref: to case#16-02)

Hello Andrew:

Kindly find below written request and comments for 1023 Baltimore Blvd.

We are the adjoining property owner at the back of 1023 Baltimore Blvd. We are requesting attention and completion of all the following protection standards, we need as being adjoining property owner .

A liner must be installed for any and all fuel type storage tanks. The liner must be of quality life of 100 years protection and must be proper required thickness to protect our well .Absolute no possible leakage of any fuels oils or chemicals to our property at anytime .

The landowner and business owner of 1023 Baltimore Blvd. ,Must pay for water sample from our well every 6 month to monitor no leakage of fuel ,oil and chemicals to 100 years or the life of the business.

The landowner and business owner of 1023 Baltimore Blvd. , Must pay for soil samples from our soil every 6 months to monitor no leakage of fuel , oil or any chemicals to 100 years or the life of the business .

If we sustain any well damages we will bring a class action lawsuit to the property owner and business owner of 1023 Baltimore Blvd. will have to drill a new well on our property and we will not agree to hook to any public water and will not agree to delivery of any bottle water . We are 100% well water property only

A soil bank or soil berm must be constructed along back side of property of 1023 Baltimore Blvd and a 14 foot solid privacy fence must be installed on top of soil bank or soil berm, must be same heights as current fence of medical center to right of 1023 Baltimore Blvd property , 100% solid fence so no entrance to our adjoining property along back of 1023 Baltimore Blvd.

a soil bank or soil berm must be constructed and a 14 foot privacy fence must be installed down property line that joins us our property is on the left the drainage pipe is installed on this property we want our privacy 100% and this parcel is part of 1023 Baltimore Blvd this must be included in soil construction and fence installed

Maintenance of fence privacy daily for any and all required repairs preformed by property owner and business owner . We will not tolerate anybody anytime on our property from 1023 Baltimore Blvd. If fence needs repaired has to be done immediately ,no fence open over night we require 100% privacy from that business.

The soil and land at 1023 Baltimore Blvd. for excavating must be sloped towards to route 140 not towards our property that joins along whole back side. No water run off entering our property anytime .

We reside at our resident 365 days a year ,we have always had our privacy and we will not except anybody from 1023 Baltimore Blvd intruding on our property anytime day or night. Our privacy must be address 100% before any business of any kind goes to 1023 Baltimore Blvd.

We have resided at our property since 1795 and raised livestock and currently have livestock , and does not want any harm of any king to use and our animals from people from 1023 Baltimore Blvd.

The owners of 1023 Baltimore Blvd.can not anytime apply any forum chemicals along property line or privacy fence line due to grazing our livestock and due to mist transmitting in the air harming our livestock this will not be excepted

So in closing the committee must consider that this join our resident and we have been here the longest with the same family . We want our privacy and we do not want any crime and damages to our soil our water and our livestock and us .

Sincerely Yours
Lockard Family
936 Old Westminster Pike
Westminster, MD 21157

Sent: Wednesday, February 24, 2016 11:52 AM
To: Andrew Gray
Subject: Addittional Response and Comments

Hello : Andrew

These are more concerns and comments we have from being current adjoining property owner to 1023 Baltimore Blvd.

We are against this type of business going to this location because this will impact our daily live style on our residential private property.

The planning and zoning development committee , we know would want this type of business in their adjoining back property of their primary only resident where they live . The crime and damage's that this business currently attract at current location. We do not want will not tolerate any of that .

The noise from the property by the machines and customers will echo right into the back of our house this will not be tolerated.

The lighting none is to be shinning onto any of our property anytime all lighting must be directed to business or down toward ground none on our property. Remember this is our house of resident and we will not tolerate any of that on our property.

We understand progress but this forum of progress is not actually acceptable for this particular subject property. This area is design for business open normal hours of a day like as late as 10pm not 24 hours a day and 7 days week. Look at all the other business from market street heading east on 140 none are open 24 hours because all of those business understand when they went in their that residential properties adjoined the back of those property's was their before they wanted to move their business into this area

So why would the Planning and zoning be even considering putting a general business retail business on this location when no other retail open 24 hours is in this general area of business usually like business with like hours are in general area where residential properties are . Their is other forms of business that could go hand in hand with all current business only open till around 10pm. we know the committee would not want to live right by that 24 hour business so why make us since we was the very first here and we have always had livestock and currently have livestock .

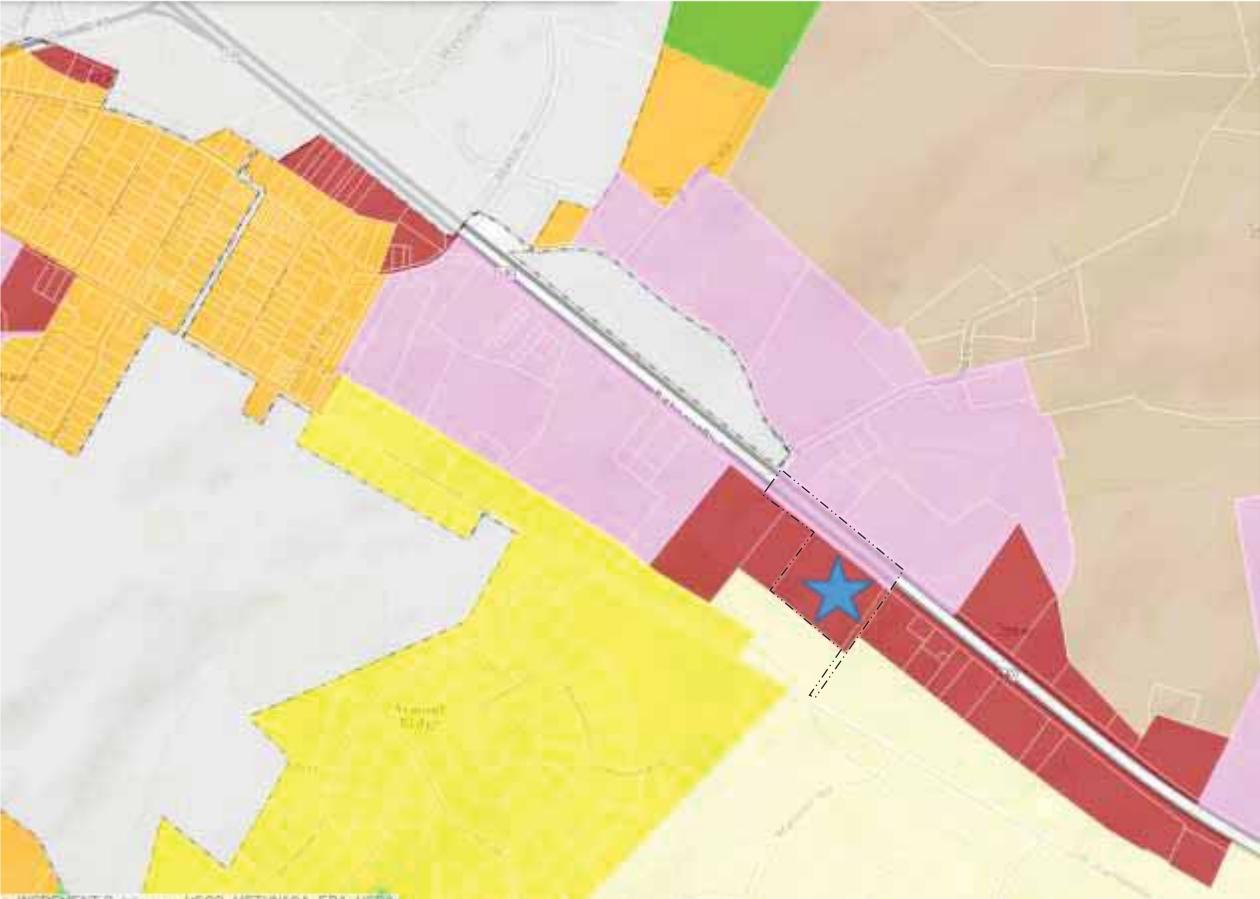
About police response this location should have not been annex into city. Since State police is right across the road and their response would be quicker than the city police do to travel time and that lost time mean that criminal would come on to our property and bother our resident and could possible bring harm and crime to us and we do not and will not tolerate that. Their again when the committee approved this we feel did not look at the whole large current picture for the area.

So in closing fully understand we are against this type business 24 hours 7 days but would go along with a business like all the other current business in this area open to approx. 10pm. Again we want our privacy and no crime no damages to us our livestock and our property this is our home and our home is where our heart is but that is not where sheetz has their heart not at the location.

Also kindly attach our previous letter that goes with this letter attach both together for committee

Sincerely yours
Lockard family
936 Old Westminster Pike

Carroll County Zoning



Legend

 I-R	 AG	 Corporate Limit
 R-20,000 = Residential		 Site
 R-40,000 = Residential		 Inside City Limits
		 B = Business

CITY OF WESTMINSTER, MARYLAND

BOARD OF ZONING APPEALS

Decision - Case No. A00-4
(Special Exception)

On July 18, 2000, the Applicant, HRW-LMT, LLC, filed an application seeking a special exception under Sections 164-42F and 164-42R of the Westminster City Code to construct, and operate an automobile service station and a car wash on property located in the southeast quadrant of the intersection of new Center Street and Leidy Road. The property is located in the City's "B" Business Zone and is a portion of a larger development proposal collectively known as Westminster Marketplace. After the realignment of Leidy Road, the subject property will abut Maryland Route 140.

The application was the subject of a public hearing conducted by all members of the Board on September 7, 2000. At that time, the Applicant presented evidence and testimony in support of the requested special exception. Aside from the Applicant's witnesses, two other individuals presented testimony: Ms. Patricia Domser and Reverend James E. Hinton. Ms. Domser leases property on the opposite side of Maryland Route 140 from the subject property. Reverend Hinton was interested with respect to the proposal in its relation to the neighboring Ellsworth Cemetery. Both Ms. Domser and Reverend Hinton participated during the course of the process, but neither expressed any opposition to the granting of the special exceptions. Additionally, the file does not contain any correspondence or any individuals opposing the application.

After careful review of all of the testimony and evidence of record, it is the unanimous decision of the Board that the special exception be granted in accordance with the binding testimony and exhibits of record and for the reasons stated herein.

The Applicant presented three witnesses in support of its application. The first witness was Mr. Henry Resnikoff, who is one of the principals of the proposed Westminster Marketplace Development. Mr. Resnikoff described the proposed project in the City to be known as Westminster Marketplace which is an assemblage of 87 acres of land which was annexed into the City in 1999. The property is commercially zoned and consists of five individual commercial lots, each of which is scheduled to be occupied by a major retailer. The proposal before the Board was for a automobile service station and car wash.

Mr. Resnikoff testified that the parcel consists of a 2.39 acre site that fronts on Route 140 and fronts on new Center Street when it is to be completed. Mr. Resnikoff testified that the size of the proposed development was almost twice the size of a typical

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automobile service station/car wash. He described property located to the east which is occupied by the Ellsworth Cemetery. The proposed development will have a 25 foot buffer to the east and a 35 foot buffer to the north on its boundaries with the cemetery. Mr. Resnikoff also pointed out that the site was approximately 25 feet in elevation below the cemetery so that there was relief by virtue of buffers, as well as physical relief.

Mr. Resnikoff testified that the site was totally served by public water, sewer and will be served by natural gas, electric and telephone. He also described the stormwater management system which would service the project, including the development. In his view there would be no negative impacts to those public facilities as a result of the proposed use.

With respect to the issue of traffic control, Mr. Resnikoff indicated that the Applicant was adding a full signalized intersection which has been approved by the State Highway Administration and the City of Westminster.

The Applicant's second witness was John Boling, a principal with The Traffic Group, Inc., which had been retained by the Applicant to prepare traffic impact studies for the proposed development. Mr. Boling testified that said studies were prepared in accordance with all applicable State Highway Administration, County and City requirements and had been approved by all agencies. Mr. Boling described the traffic improvements and the configurations which would be utilized with respect to the proposed development and for future growth. Additionally, Mr. Boling advised as to his opinion that there were no problems with the internal circulation provided on the site plan. Further, he indicated that there were no traffic nuisance problems presented by the proposed site.

The Applicant's third witness was John Hollender, who is employed by the Eastern Petroleum Corporation which was working with the Applicant to develop the site plan for the facility. Mr. Hollender testified that his duties included assessing the need for new service stations in the Maryland area. He testified that there was a very strong need for a service station at the subject site, primarily because of the tremendous amount of growth that is occurring within the area and the additional housing that will be built in the area. Additionally, Mr. Hollender noted that along the stretch of road between Route 795 where it intersects Route 140 and the subject location that there was only one station on the westbound side of Route 140. That station is the Shell Jiffy Mart Station, which is approximately 4.3 miles from the subject site. As a result, Mr. Hollender related that

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there was very little service on that side of the highway which is the "coming home" side of the street. He further noted that consumers generally like to visit a gas station and convenience store facility on their return trip home in the evening.

Mr. Hollender also testified that based upon his experience that Route 140 was an under-served market for gasoline on the westbound side. He noted that Route 140 was a very heavily traveled roadway with over 30,000 cars a day and that typically within a 3-4 mile radius, you would have several service stations to serve the type of traffic volume and the density which exists in Westminster.

Mr. Hollender described the proposed gasoline and convenience use that the Applicant proposed to locate on the site and also described the operation of the proposed car wash. In that regard, he testified that there was an automatic shut-off system for electronic leak detection. He also noted that the design would be such that no fumes would escape from the system and that it was a very reliable and safe one. Further, he testified that the area of gasoline is heavily regulated by the State and Federal Government in terms of compliance requirements. He also provided the Board with a proposed photograph of a recent service station developed by his company.

In describing the operation of the proposed car wash, Mr. Hollender noted that it would utilize 80%-90% recycled water, reclaimed water so that the system would be a very efficient one. Mr. Hollender also testified regarding proposed landscaping along the perimeter, as well as buffering areas to screen the Ellsworth Cemetery.

Two other individuals participated during the course of the process: Ms. Patricia Domser and Reverend James E. Hinton. Ms. Domser raised an issue with respect to the adequacy of posting the property. She additionally raised concerns with respect to pedestrian access and sidewalks. However, at the conclusion of the hearing, Ms. Domser testified that she was not opposed to the site. Reverend Hinton testified that his concern at the hearing was the effect of the proposed special exception upon the Ellsworth Cemetery. However, he also did not indicate that he was opposed to the requested special exception.

Prior to the granting the special exception in this case, the Board also heard testimony from John D. Dudderar, the City Clerk, with respect to the advertising process utilized by the City with respect to special exceptions. Mr. Dudderar testified that he personally had posted the sign on the property. He also testified that there had been an advertisement placed in the newspaper and that certain notifications had been made to property owners.

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Prior to approving the special exception, the Board determined that the posting of the signage was done properly by the City, that the newspaper ads were placed properly and that the certified return receipt letters had been placed by the City properly. Thereafter, the Board unanimously voted to grant the special exception requested by the Applicant.

In reaching its decision to grant the instant application, the Board is governed by Sections 164-169 and 164-170 of the Westminster City Code. Section 164-169A sets forth the various factors to be considered by the Board of Appeals in connection with special exceptions. In pertinent part it states as follows:

"In making its determination, the Board may consider whether the appeal of petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood."

In reaching its decision, the Board considered various provisions which are contained in Section 164-169 and the evidence presented relating thereto:

- "(1) The number of people residing or working in the immediate area concerned.
- (2) The orderly growth of a community,
- (3) Traffic conditions and facilities.
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.
- (5) The conservation of property values.
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (7) The most appropriate use of land and structure.

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- (8) Prior decisions of the courts regarding such matters.
- (9) The purpose of the regulations as set forth in this chapter.
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the city to supply such services.
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.
- (13) The preservation of cultural and historical landmarks.
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available, and the safe access of cars to highways or roads.
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods."

Section 164-170 of the Westminster City Code is entitled "Conditions for Granting Special Exceptions". That Section states as follows:

- A. The Board may grant a special exception when it finds a preponderance of the evidence of record that:
 - (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan, or portion thereof, adopted by the Commission;

- (2) The proposed use at the location selected will not:
- (a) Adversely affect the health and safety of residents or workers in the area;
 - (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or
 - (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character, and number of similar uses; and
- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

- B. The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board."

Additionally, in cases involving automobile service stations, the Board is required to utilize the provisions of Section 164-149. The provisions of that Section contain additional requirements with respect to automobile service stations including need, signs, lighting, development standards, driveways and location of gasoline pumps. The provisions further require that the Board make additional findings in addition to those mandated pursuant to Section 164-170.

In reviewing the evidence of record, the Board has considered the factors set forth in Section 164-169. It also has reviewed the standards which must be met under Section 164-170 and 164-149. The Board finds that there is an abundance of evidence from which it can conclude and does conclude that the standards set forth in Sections 164-149 and 164-170 have been met. In that regard the Board finds that the proposed use does not adversely affect the general plan for the physical development of the district.

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Evidence to that effect was provided by all of the Applicant's witnesses. Additionally, the Board further finds that the proposed use will not adversely affect the health and safety of residents or workers in the area, that it will not overburden existing public facilities and that it will not be detrimental to the use or development of adjacent properties or the general neighborhood. Again, the evidence and exhibits of record provide substantial evidence for the Board's conclusions in this regard.

The Board also finds that the standards contained in Section 164-149 have been met. It specifically finds that the use will not constitute a nuisance because of noise, fumes, odors, or physical activity in the location proposed. It finds that the use at the proposed location will not create a traffic hazard or a traffic or lighting nuisance and that it will not adversely affect nor retard the logical development of the neighborhood or of the industrial or commercial zone in which the station is proposed. In making that finding the Board has considered the service required, the population, character, density and number of similar uses.

The Board also concludes that for the public convenience and service, a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City, and further finds that the use at the location proposed will not result in a multiplicity of proposed uses. In that regard, the Board accepts as credible and reasonable, the evidence presented by John Hollender. Further, the Board finds that the proposed use will be conducted upon a lot having a minimum area of 20,000 square feet and a minimum lot frontage of 120 feet on a public road.

The Board determines that the Applicant, in its presentation, has met its burden of proof with respect to all of the above-referenced standards and requirements. Accordingly, it hereby grants by unanimous vote the requested special exception. The Applicant is bound by all of the testimony and evidence of record in implementing this decision, and shall also comply with any additional conditions, restrictions or requirements of its site plan approval.

Date: 9/22/00


Romeo Valianti, Chairman

ATTEST:


John D. Dudderar, Secretary

pl\w-bza\3\A00-4sp.exe

CITY OF WESTMINSTER, MARYLAND

BOARD OF ZONING APPEALS

Decision - Case No. A01-6
(Special Exception)

On June 27, 2001, the Applicant, BJ's Wholesale Club, Inc., ("BJ's") filed an application seeking a special exception under Sections 164-42R and 149 of the Westminster City Code to construct and operate an automobile service station for the retail sale of gasoline as a use on Lot 6, "Westminster Marketplace." This use would complement the Applicant's previously approved retail shopping facility known as BJ's Wholesale Club facility. The property is located in the City's "B" Business Zone.

The application was the subject of a public hearing conducted by three members of the Board on August 31, 2001. At that time, the Applicant presented evidence and testimony in support of the requested special exception. The Applicant was represented by counsel, John T. Maguire, II, Esq. Mr. Maguire elicited testimony from Mr. Peter J. Hopley, a representative of BJ's, and from three expert witnesses. No persons testified in opposition to the requested special exception. Additionally, the file does not contain any correspondence evidencing any such opposition.

After careful review of all of the testimony and evidence of record, it is the unanimous decision of the Board that the special exception be granted in accordance with the binding testimony and exhibits of record and for the reasons stated herein.

The Applicant presented four witnesses in support of its application. The first witness was Mr. Peter J. Hopley, who is a Vice President and manager of design at BJ's club. Mr. Hopley testified that he was responsible for all of the design, construction and titlement of BJ's service stations. He indicated that BJ's has 44 fueling facilities in operation and another 50 or so in the design and approval process. He testified that BJ's would be the owner/operator of the facility which would be located on the site in Westminster Marketplace which will be opening in the near future as BJ's. Mr. Hopley testified that the proposed use was a service station which would dispense fuel only. He noted that the facility would not sell oil or any other type of items such as soda or cigarettes.

Mr. Hopley described the proposed use as a six pump fueling facility which would provide twelve fueling positions. The facility would include a kiosk building, which houses a mechanical and monitoring equipment, as well as the individual who will be collecting cash for the customers. The facility will include a canopy which will cover the pumps, fueling islands and requisite signing. Mr. Hopley testified that the

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facility would use very clean and state-of-the-art equipment. In that regard, he described the canopy lighting as a semi-recessed light fixture cabinet which is service-mounted on the bottom of the canopy. That model fixture was chosen because there is very little glare from it. He also described the fire protection system within the canopy which will protect the fuel islands.

Mr. Hopley described the typical hours of operation as being from 6:00 a.m. until one half hour after closing of the BJ's club. He noted that the club generally closes at 9:00 p.m., but that during the holiday period those hours would be extended to 10:00 p.m. As a result, the fueling facility's hours of operation would be open 6:00 a.m. to 9:30 p.m. or 10:30 p.m. Mr. Hopley also described a split pricing structure so that members of BJ's would pay a lower price for their gasoline. However, the station facilities would be open to the general public.

During the course of his testimony, Mr. Hopley described the proposal to include two 20,000 gallon tanks. One tank would be dedicated to unleaded gasoline exclusively and the other tank would be divided into two compartments, one 12,000 gallon unleaded tank and the other an 8,000 gallon premium tank.

During the course of his testimony, Mr. Hopley expressed his opinion that none of the characteristics of the facility would adversely affect public health, safety, security, morals or general welfare. Similarly, he opined that the facility would not cause any risk to life or property in the neighborhood. In that regard, Mr. Hopley provided the Board with an orientation with respect to the retail area which includes a Home Depot across the street, and a Kohl's adjacent to the BJ's facility. He described the surrounding properties as a commercial retail development and stated he did not believe that there was anyone residing within the immediate area.

Mr. Hopley testified that the facility was consistent with the orderly growth of the area and that it would not adversely affect or retard the logical development in the surrounding commercial zone. He also expressed his opinion that facility would not have any adverse impact upon the conservation of property values and that it was the most appropriate use of the land and structure. He further testified that the use would not change the character of the neighborhood.

The second witness on behalf of BJ's was Ronald B. Laurence, who is a mechanical engineer. Mr. Laurence testified that he worked for the firm Jacques Whitford in Portsmouth, New Hampshire, and that he worked primarily

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with the design of fueling facilities, mostly for BJ's. Mr. Laurence identified the Applicant's Exhibit No. 2 which was an amended resubdivision of lots 4 and 5 for Westminster Marketplace, and provided an overview with respect to the location of the proposed service station along its Market Street footage. Mr. Laurence also referred to Applicant's Exhibit No. 3 which is a site plan of the proposed retail fueling facility. That document showed the layout for the proposed six pumps, kiosk and other features of the proposed special exception.

Mr. Laurence testified that the service station facility was located in such a manner so as to be a vehicle oriented facility. He noted that it had been purposely segregated from anywhere where there would be pedestrian traffic. The proposed facility is located away from the main parking lot for BJ's so that it would be isolated to discourage pass-by traffic.

Mr. Laurence also identified two other out-parcel lots in the Westminster Marketplace subdivision which are located in close proximity to the proposed site. As yet, no proposal has been advanced for the development of those sites.

Mr. Laurence testified that he was familiar with the special requirements of the City for automobile service stations contained in Section 164-169 of the Zoning Ordinance. He stated that the proposed special exception was feasible from a design engineering standpoint under applicable laws and that it was consistent with the master plan for the area. He represented that the site would meet the applicable set-back and parking requirements, as well as stormwater management requirements. Further, he stated that the site would be able to accommodate the required landscaping. Further, he noted that the site did not propose any problems relating to pedestrian traffic. He advised that the facility was served by both public sewer and water, and that the site was fully accessible for the largest of vehicles and trucks with respect to fire fighting equipment or access for fire, police and health services.

Mr. Laurence also testified that the facility had been designed to provide a number of unique and redundant systems to provide safety with respect to the possibility of risks of gas leaks or explosion at the site. He also reiterated that the lighting fixtures were designed so that the light would essentially point down and be very concentrated around the dispenser area only. He also testified that the facility would not generate any odors,

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dust, gas, smoke, fumes, vibrations, glare or noise. He also was not aware of any adverse impacts that the proposed use would have on adjoining properties or on the neighborhood.

The next witness was James Giegerich, who was recognized by the Board as an expert in real estate economics, planning and feasibility analysis. Mr. Giegerich testified that he had evaluated the market for retail gas services relating to the proposed BJ's facility. In that regard, Mr. Giegerich provided the Board with a comprehensive written report which detailed the proof of need analysis on behalf of the Applicant.

Mr. Giegerich testified that his methodology was a basic economic analysis of supply and demand. The first step was to establish a trade area from which the principal source of gas customers will come. Thereafter, there is an examination of the supply side to determine whether the existing gas stations within the trade area are sufficient to service the need. Mr. Giegerich's opinion was that there was a need for the proposed facility.

Mr. Giegerich described his report in detail before the Board. For various reasons, he reached his professional opinion that there was a need for an automobile filling station to serve the BJ's club regional customer base who will be coming to its store. He also concluded that considering the service required, the population, character, density and similar uses in the local market area, that the proposed facility would not adversely affect the existing stations in the immediate area. He also determined that the proposed location of the facility would not adversely affect nor retard the logical development of the general neighborhood or business zone because it was safely integrated into the BJ's site and was oriented to serving the customers already on the site for primary shopping at BJ's club. As a part of his analysis, Mr. Giegerich expressed his opinion that the proposed station would not be competitive with others along Route 140 because it is designed to serve a different market, i.e., BJ's customers. Mr. Giegerich's opinion was not only that there was a need for the proposed facility, but that, indeed, there might be a demand in the future for an additional application in order to service the public convenience and demand.

The Applicant's last witness was Mickey Cornelius, Vice President of the Traffic Group, Inc. Mr. Cornelius is a registered professional engineer, a traffic engineer, and transportation planner. He testified that his firm had done a global traffic impact analysis for Westminster Marketplace in 1999. Mr. Maguire advised the Board that improvements under construction for that commercial development were as a result of a study performed by Mr. Cornelius' firm.

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Mr. Cornelius testified that a wholesale club such as BJ's does not generate the same amount of traffic as general retail shopping. He noted that a wholesale club generates about 25% less trips on a peak hour basis, on a daily basis, than a retail shopping center would generate. Additionally, Mr. Cornelius also referred to information which showed past experience with BJ's service stations that approximately 94% of the trips at the gas pumps would be customers of BJ's club who were either getting gas before or after shopping at that club.

Mr. Cornelius expressed his opinion that the proposed type of use would not have any adverse impact upon the road improvements. In addition to his testimony, Mr. Cornelius provided a written report dated August 24, 2001, which was admitted in evidence as the Applicant's Exhibit 6. In his report, Mr. Cornelius also expressed his opinion that the proposed fueling facility would not adversely impact surrounding area traffic conditions.

As noted, there was no opposition to the requested Special Exception.

In reaching its decision to grant the instant application, the Board is governed by Sections 164-169 and 164-170 of the Westminster City Code. Section 164-169A sets forth the various factors to be considered by the Board of Appeals in connection with special exceptions. In pertinent part it states as follows:

"In making its determination, the Board may consider whether the appeal of petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood."

In reaching its decision, the Board considered various provisions which are contained in Section 164-169 and the evidence presented relating thereto:

- "(1) The number of people residing or working in the immediate area concerned.
- (2) The orderly growth of a community,
- (3) Traffic conditions and facilities.

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- (4) The effect of such use upon the peaceful enjoyment of people in their homes.
- (5) The conservation of property values.
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (7) The most appropriate use of land and structure.
- (8) Prior decisions of the courts regarding such matters.
- (9) The purpose of the regulations as set forth in this chapter.
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the city to supply such services.
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.
- (13) The preservation of cultural and historical landmarks.
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available, and the safe access of cars to highways or roads.
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods."

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Section 164-170 of the Westminster City Code is entitled "Conditions for Granting Special Exceptions". That Section states as follows:

- A. The Board may grant a special exception when it finds a preponderance of the evidence of record that:
 - (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan, or portion thereof, adopted by the Commission;
 - (2) The proposed use at the location selected will not:
 - (a) Adversely affect the health and safety of residents or workers in the area;
 - (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or
 - (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character, and number of similar uses; and
 - (3) The standards set forth for each particular use for which a special exception may be granted have been met.
- B. The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board."

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Additionally, in cases involving automobile service stations, the Board is required to apply the provisions of Section 164-149. The provisions of that section contain additional requirements with respect to automobile service stations including need, signs, lighting, development standards, driveways and location of gasoline pumps. The provisions further require that the Board make additional findings in addition to those mandated pursuant to Section 164-170.

In reviewing the evidence of record, the Board has considered the factors set forth in Section 164-169. It also has reviewed the standards which must be met under Sections 164-170 and 164-149. The Board finds that there is an abundance of evidence from which it can conclude and does conclude that the standards set forth in Sections 164-149 and 164-170 have been met. In that regard the Board finds that the proposed use does not adversely affect the general plan for the physical development of the district. Evidence to that effect was provided by the Applicant's witnesses. Additionally, the Board further finds that the proposed use will not adversely affect the health and safety of residents or workers in the area, that it will not overburden existing public facilities and that it will not be detrimental to the use or development of adjacent properties or the general neighborhood. Again, the evidence and exhibits of record provide substantial evidence for the Board's conclusions in this regard.

The Board also finds that the standards contained in Section 164-149 have been met. It specifically finds that the use will not constitute a nuisance because of noise, fumes, odors, or physical activity in the location proposed. It finds that the use at the proposed location will not create a traffic hazard or a traffic or lighting nuisance and that it will not adversely affect nor retard the logical development of the neighborhood or of the industrial or commercial zone in which the station is proposed. In making that finding the Board has considered the service required, the population, character, density and number of similar uses.

The Board also concludes that for the public convenience and service, a need exists for the proposed use due to the needs of the local market area and the shoppers at and near the Westminster Marketplace business park, including BJ's club, Lowes, Home Depot and Kohl's. It further finds that the use at the location proposed will not result in a multiplicity of proposed uses. In that regard, the Board accepts as credible

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and reasonable the evidence presented by James Giegerich regarding need. Further, the Board finds that the proposed use will be conducted upon a lot having a minimum area of 20,000 square feet and a minimum lot frontage of 120 feet on a public road.

The Board determines that the Applicant, in its presentation, has met its burden of proof with respect to all of the above-referenced standards and requirements. Accordingly, it hereby grants by unanimous vote the requested special exception. The Applicant is bound by all of the testimony and evidence of record in implementing this decision, including, but not limited to, its stated hours of operation, and shall also comply with any additional conditions, restrictions or requirements of its site plan approval.

Date: Sept. 18, 2001


Romeo Valianti, Chairman

ATTEST:


John D. Dudderar, Secretary

CITY OF WESTMINSTER, MARYLAND

BOARD OF ZONING APPEALS

Decision - Case No. A10-1

On or about February 23, 2010, the Applicant, Giant of Maryland, LLC ("Giant"), filed an application seeking a special exception under Section 164-101(J) of the Westminster City Code to establish a service station on property which it leases located at 405 N. Center Street, Westminster, Maryland 21157 (the "Property"), in the Cranberry Square Shopping Center (the "Center") ("Application"). In the alternative, Giant seeks to reverse the determination of the Zoning Administrator that a fueling facility is not an accessory use to Giant's existing food and grocery store on the Property, pursuant to §164-163 of the Westminster City Code.

The Property is located in the southeast quadrant of the intersection of MD Route 140 and North Center Street, in the City of Westminster. *See* Overall Site Plan for Proposed Fuel Facility Cranberry Square SC, Giant Store #109, Applicant's Exhibit 2. It is zoned Planned Regional Shopping Center ("PRSC"). *Id.* The owner of the Property is Cranberry Retail, Inc. *Id.* Giant currently operates a food and grocery store on the Property, trading as "Super Giant." *See* Application. The food and grocery store is a one story building of approximately 60,800 square feet. *See* Overall Site Plan, Applicant's Exhibit 2. The service station is proposed within the parking lot that serves the Center, in front of the Giant grocery store. *Id.*

The Application was the subject of a public hearing conducted by two members of the Board, Gary Beard, Chairman, and Ed Cramer, on April 27, 2010. At the outset of the meeting, the Applicant was given the opportunity to present its case relative to the Administrative Appeal first, allowing the Board to rule thereon prior to hearing the special exception case, which would not be necessary if the Appeal were successful. The Applicant declined, preferring to present evidence and testimony in support of the requested special exception and administrative appeal at the same time and to have the Board rule on each matter at the conclusion of the hearing. Giant was represented by counsel, John T. Maguire, Esq. Mr. Maguire elicited testimony in support of the special exception from Charles Dean Smith, of Vanasse, Hangen, Brustlin, Inc., Rubin Bard, Director of Real Estate for Giant Food, and Joseph Cronyn, a Real Estate Consultant/Market Analyst. No one else spoke in favor of the application.

Two individuals testified in opposition to the proposed special exception, namely James Langdon and Mohammad Sajid. Both Mr. Langdon and Mr. Sajid own gasoline stations in the City of Westminster. These individuals were provided an opportunity to testify, as well as to cross-examine Giant's witnesses.

As is more fully explained herein, after careful review of all of the testimony and evidence of record, it is the unanimous decision of the Board that a fueling facility such as that proposed is not an accessory use to a grocery store, but rather is a "service station" for which a special exception is required in the PRSC Zoning District. Finally, the Board finds that Giant has met all of the criteria in the Westminster City Code, Chapter 164 "Zoning and Subdivision of Land" for the grant of a special exception for a service station on the Property and that the special exception should be granted in

accordance with the binding testimony presented and the exhibits of record, for the reasons set forth herein.

As a preliminary matter, the Board would like to address the late submission of Giant's prehearing statement. At the outset of the hearing, Giant acknowledged that it filed its prehearing statement late, and asked if it could proceed. Prehearing statements are required to be submitted fifteen (15) days prior to the date set for the hearing. *See* Rules of Order and Procedure for the Board of Zoning Appeals of Westminster, Section 8. Giant submitted its prehearing statement on April 20, 2010, only seven (7) days prior to the meeting. Failure to comply with this requirement may be cause for either refusal to accept the pre-hearing statement, cause for postponement, continuation of the hearing and/or decisions to leave the record open for a specified time to permit rebuttal evidence, among other remedies. *Id.* Neither Mr. Langdon nor Mr. Sajid, those present in opposition to the Application, opposed Giant's request to proceed. The Board found that the Board had ample time to review the prehearing statement and that no one was prejudiced by the late filing. Accordingly, the Board gave Giant permission to proceed with its case, despite the late filing. Nobody objected to the Board's determination in this regard.

Giant's first witness was Charles Dean Smith, of Vanasse Hangen Brustlin, Inc. Mr. Smith is a Civil Engineer, and was accepted as an expert by the Board. Mr. Smith explained the proposal and the site plan accompanying the application. *See* Applicant's Exhibit 2. The Center is 18.85 acres with 120 feet of road frontage and 25% landscaping. The proposed special exception is for a fueling facility with four multi-product dispenser units with eight fueling positions. *See* Cronyn Need Analysis, Exhibit 9. Diesel will not be offered. The fueling facility will be manned by an employee of Giant located in a 6' X 10' kiosk to be positioned in the middle of the fueling island. Candy and cigarettes will be sold from the kiosk. Giant is uncertain whether a bathroom will have to be provided in the kiosk for the employee. A vending machine is also proposed. The area of the proposed special exception use is 25,761 square feet. The canopy area is 20' X 109.5', with about 114 feet of clearance. The fueling station will reduce parking provided for the Center from 811 parking spaces to 738 spaces. 685 spaces are required. There will be one 12-foot freestanding monument sign. Prices will be posted underneath the Giant logo. The Giant logo will also appear on either side of the canopy. The lighting for the canopy is recessed and directed downward. The new stormwater management regulations will apply to the development of the fueling facility. Mr. Smith further testified that the use is consistent with the City's Comprehensive Plan and the use will not change the character of the neighborhood. The proposed fueling facility is internal to the shopping center; therefore, there will not be any negative effects on adjoining properties or the development thereof. Mr. Smith testified that variances are not required to build the facility. There are no schools, churches or places of public gatherings within the immediate neighborhood that would be affected by the proposed use.

Mr. Smith further testified that the fueling facility is not a trip generator as such, but rather it captures existing trips on the road, ie "pass-by trips." He testified that forty percent (40%) of the fueling facility customers will stop in connection with their grocery shopping at the Giant. The whole idea of the fueling facility is to provide a service to Giant's customers. Mr. Smith testified that the effects on the level of service and the effects on queuing at any of the entrances will be

minimal.

Mr. Smith further testified that the proposed use is consistent with the orderly growth of the community, and it will not create any odors, dust, gas, smoke, fumes, vibrations, glare or noise upon surrounding properties. He knows of no reason why the establishment of the use at this location would have any adverse effects above and beyond those inherently associated with an automobile service station, regardless of its location in the PRSC zoning district.

Mr. Smith also testified that it is commonplace for food stores to offer gas, and that fueling facilities such as the one proposed is subordinate to the main use of the building (food/grocery store). Giant started this program a few years ago, and they operate three stores with fueling facilities in Virginia, three in Maryland and one in Delaware (their Mid-Atlantic Region). Giant has a sister company in New England called Stop and Shop Supermarkets that has sixty such stores with fueling facilities. Mr. Smith asserts that the gas station is an integral part of the food store. Mr. Smith also testified that BJ's Wholesale Club has a fueling facility. Martin's in Eldersburg has a fuel facility in conjunction with its grocery store. Martin's is part of the Giant chain. Although the Applicant proffered a former decision of the Board approving a special exception for a fueling facility in connection with BJ's showing that "BJ's has 44 fueling facilities in operation and another 50 or so in the design and approval process," as support for its argument that a fueling facility has become accessory to the food store use, the Board is not persuaded. First, the Board has no way of knowing whether the 50 facilities referred to in the decision were ever constructed and the Applicant did not offer any testimony in this regard. Second, the Board finds a distinction between a grocery store such as Giant and a wholesale club such as BJ's, with a grocery store having a much more limited purpose.

Mr. Sajid questioned Mr. Smith regarding a gas truck's ability to access the site and deliver the product, asserting it is too narrow for the trucks to enter the site and maneuver around the site. Mr. Smith responded that although it would be tight, it could be done. The Board notes that the site will be subject to site plan review and this issue will be further addressed at that time.

Giant's next witness was Rubin Bard, Director of Real Estate for Giant Food. Mr. Bard testified that Giant is a tenant at the subject location. He submitted a letter of support from the owner of the Property. See Exhibit 7. Mr. Bard testified that grocery stores have morphed and now contain coffee kiosks, banks, cleaners, and floral departments. The stores are trying to provide the best customer service. Mr. Bard admitted that one does not see many fueling facilities associated with grocery stores in Maryland. The store hours are 6 a.m. until 11:00 p.m. Monday through Saturday and 6:00 a.m. until 10:00 p.m. on Sundays. The fueling facility will have the same hours as the store. Mr. Rubin testified that the proposed use will not adversely impact the public health, safety or welfare or affect the orderly growth of the community. Further he testified that the fueling facility is a most appropriate use for the property. Mr. Langdon, during cross examination, questioned Mr. Bard regarding the fact that trucks will have to cross through the parking lot where people are pushing shopping carts, thereby creating a dangerous situation. Mr. Bard disagreed with Mr. Langdon's assessment. The Board notes that, referring to grocery stores with fueling facilities, Mr. Bard stated: "[y]ou don't see as many in Maryland just because we've been a little bit behind the curve ..." See

Transcript, p. 56.

Next, Giant called Joseph Cronyn, a Real Estate Consultant/Market Analyst with Lipman, Frizzell & Mitchell, LLC. The Board accepted Mr. Cronyn as an expert in real estate market analysis. Mr. Cronyn submitted a Needs Analysis for the proposed fueling station, which concludes that there is a need for the proposed fueling station based on evidence that there is a shortfall in the supply of gasoline fueling stations in the City's trade area. *See* Exhibit 9. Mr. Cronyn reviewed the contents of the Needs Analysis and his conclusions relating thereto. Mr. Cronyn further concludes in his report that the proposed use will be reasonably convenient to the public. Mr. Cronyn testified that what Giant is proposing here is a distinctly different kind of service than the typical gas station. He emphasized that the focus is on the supermarket. He described that the proposed fueling facility is a "niche market." It is a very limited facility. A convenience store is not being proposed in connection with the fueling facility as Giant does not want to detract from the grocery store. Mr. Cronyn explained there are a lot of households and a lot of buying power in the area in which the fueling facility is proposed. Based upon Mr. Cronyn's analysis he concludes that the existing gasoline supply is not meeting the current demand for gasoline in the trade area and that there is ample room for additional supply within the City. Mr. Cronyn stated that there is not an automobile service station within one mile on the same side of the road except at intersections. He further testified that there are not two service stations within four quadrants of an intersection, including one half mile from the center of the intersection in any direction. He does not believe that the proposed use will result in a multiplicity of the proposed or similar use, as he stated that BJ's is the closest thing to what is proposed. Mr. Cronyn described BJ's as a "unique use in Westminster." Mr. Cronyn reiterated that the fueling facility is an integral part of Giant food store operations. He further concludes that the proposed use is compatible with the intent of the PRSC zoning district.

Mr. Sajid expressed concern that the fueling station will put him out of business. Mr. Sajid's property is next door to the Center. He testified that every time a new gas station opens, his volume goes down. He presented volume numbers from 1999, "like 150,000 gallons a month," to after BJ's and Royal Farms opened when the volume dropped to 60,000 gallons per month. He asserts that there are six stations within less than ½ mile of the proposed fueling station and that there is no demand for another gas station. He is opposed to the Application.

Similarly, Mr. Langdon testified that demand at his station is off by 10% and that he checked with other gas station owners in the area and they are off by 10 to 15% as well. As inventories increase, demand decreases. Mr. Langdon did not submit any supporting documents. Mr. Langdon stated that "we don't need another gas station."

In response to the comments from Mr. Sajid and Mr. Langdon, Mr. Cronyn stated that the Sunoco, Mr. Sajid's business, is not oriented toward the Center.

After the conclusion of the Applicant's witnesses, the Board offered an opportunity to the opponents to produce testimony and evidence. Mr. Langdon stated that putting a gas station within a parking lot will pose significant safety concerns. He is also concerned that once you allow Giant to do it, Safeway will want to do it. Mr. Langdon said that Westminster does not need a gas station

on every block. He testified further that all the gas station owners are off by 10 to 15% in sales; however, he did not submit any documentation in support of his assertions. A new station will force them to lower their prices, if volume drops significantly, then stations will be forced out of business and the buildings will be boarded up. Mr. McGuire asked Mr. Langdon if he had any traffic engineering certificates, to which Mr. Langdon responded no, he just knows the way of tractor trailers.

Mr. Sajid expressed his opinion that the new fueling station will force him out of business. He stated that he has been in the gas station business for 15 years, and has been at this location for 10 years. He stated that every time a new gas station opens he loses business and with six stations within ½ mile, a new station is not needed. In discussions it came out that many of the stations to which Mr. Sajid was referring are located more than 1 mile away for the Property. Mr. Sajid did not submit any documents to support his assertions.

In response to the opposition's statements, the Board inquired of Mr. Cronyn as to why he believes that the market can support another station despite declining business at existing stations. Mr. Cronyn concluded, relying on his study, that not only will the economy will come back, there is ample demand to support the proposed fueling facility. Mr. Cronyn also pointed out that Mr. Sajid's Sunoco is oriented toward Baltimore Boulevard, whereas the Giant is geared internally to the Center and the Giant customers for a majority of its business. In questioning the opposition more, the Board discovered that Mr. Sajid offers gas for sale at a price 8 cents more per gallon than Mr. Langdon. Mr. Sajid stated that his buying price is greater than the price at which other gas stations sell their product.

As to the Appeal of the Determination of the Zoning Administrator, Mr. Maguire stated that the fueling station is not a full fledged service station as that term is defined in the Westminster City Code, but rather is an accessory use to the Giant grocery store, as supported by the testimony of Giant's witnesses. He alleged that the fueling facility is incidental and subordinate to the grocery store as Giant's witnesses had testified.

Tom Beyard, the Zoning Administrator, stated that the City Code clearly states that a service station is a special exception use in the PRSC Zoning District. It is not a permitted use. An accessory use is one that is customarily incidental to any permitted use in the zone. Mr. Beyard testified that the Applicant's reliance on BJ's as support for its argument that the proposed use is an accessory use to a grocery store are misplaced, as BJ's is not the same as a Giant. In fact, BJ's obtained a special exception from this Board for the fueling station. Mr. Beyard testified that a fueling station has the prime component of a service station, they offer fuel for sale. Mr. Beyard further explained that all of the other uses offered by Giant and other grocery stores as "accessory" uses, such as coffee kiosks, floral departments and cleaners, are all located interior to the store, and would be permitted uses in the PRSC zoning district in and of themselves. A big distinction here is that a service station is not a permitted use in the zone. It is a special exception use.

On or about January 22, 2010, Giant, through its counsel, Mr. Maguire, submitted a letter to Thomas Beyard, Director of Planning, Zoning and Development, City of Westminster,

requesting an interpretation that the proposed fueling facility on the Property is an accessory use under Westminster City Code, §164-100(A)(1), thereby requiring no further zoning approvals. In support of his request Mr. Maguire asserts that it has become commonplace for fuel facilities to be operated in conjunction with food and grocery stores. The fuel sales are tied to a bonus card and discounts relating to patronage of the grocery store are provided. Mr. Maguire identified two examples of such an arrangement in Carroll County, BJ's in the City of Westminster and Martins in Eldersburg. Mr. Maguire argues that the fueling facility has become customarily incidental to a food and grocery store in today's market. Accordingly, the proposed fueling facility is customarily incidental and subordinate to the principal use of the main building or lot under the definition of accessory use in Westminster City Code, §164-3.

On or about January 25, 2010 Thomas Beyard responded to Mr. Maguire stating that the proposed fueling facility is not an accessory use to the food and grocery store and therefore a special exception is required to locate it in the PRSC zone. Upon review of the City Code, Mr. Beyard concluded that while Giant's grocery store is a permitted use in the PRSC zone, service stations, including the proposed fueling facility, are special exception uses in the zone. It is from this determination that Giant has appealed.

Upon hearing testimony and evidence presented regarding the issue of whether the fueling facility is an accessory use to the permitted food/grocery store on the Property, the Board finds that fueling facilities are not customarily incidental to a food/grocery stores. Based upon the testimony of Giant's own witness, Giant only has three such grocery stores/fueling facilities in Maryland, three in Virginia and one in Delaware. Mr. Bard admitted one does not see many grocery store/fueling facility combinations in Maryland. Mr. Maguire asserts in his letter that Giant and its affiliated companies have nearly eight (80) stores nationally where fuel facilities are operated ancillary to the food stores. This equates to less than two per state on average. There is only one fueling facility associated with a store in the City of Westminster, that is BJ's Wholesale Club. The Board finds that BJ's is a warehouse that sells much more than groceries and therefore is a different situation. However, the Board notes that BJ's required a special exception for its fueling facility, which it obtained in 2001. There has been no change to the provisions relating to service stations since that time. The Board finds that fueling facilities are not customarily incidental to food/grocery stores.

The Board is heavily persuaded by the fact that the City, in establishing its various zones and the uses to be permitted therein, has stated that service stations require a special exception in the PRSC zone. In doing so the City recognized that although service stations may be generally acceptable use in the zone, specific issues must be addressed on a case-by-case basis concerning public convenience, need, traffic safety, lighting, etc. The Board is not persuaded by Giant's argument that the fueling facility is not intended to be encompassed in the definition of "service station." To permit the fueling facility as an accessory use to the grocery store would allow Giant to do something indirectly that it cannot do directly under the law.

It is uncontroverted that a food and grocery store is a permitted use in the PRSC zone. *See* Westminster City Code, Sec. 164-100. It is also uncontested that a service station is a special

exception use in the PRSC zone, subject to the provisions of City Code, Sec. 164-149. *See* Westminster City Code, Sec. 164-101. A service station is defined as "any area of land including buildings and other structures, that is used to dispense motor vehicle fuels, oil, and accessories at retail, where minor repair service is incidental and where no storage or parking space is offered for rent." *See* Westminster City Code, Sec. 164-3. Clearly Giant intends to use the Property and its building (kiosk) and structures (canopy and pumps) to dispense motor vehicle fuel, candy and cigarettes. The Board finds that the proposed fueling station is a service station necessitating a special exception.

Section 164-169A of the City's Zoning Ordinance of the Westminster City Code provides in pertinent part as follows:

"In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood."

In reaching its decision, the Board also considered various factors contained in Westminster City Code, Section 164-169 and the evidence presented relating thereto including:

- (1) The number of people residing or working in the immediate area concerned.
- (2) The orderly growth of a community,
- (3) Traffic conditions and facilities.
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.
- (5) The conservation of property values.
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (7) The most appropriate use of land and structure.
- (8) Prior decisions of the courts regarding such matters.
- (9) The purpose of the regulations as set forth in this chapter.
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the city to supply such services.
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.
- (13) The preservation of cultural and historical landmarks.
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available, and the safe access of cars to highways or roads.
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods."

Section 164-170 of the Westminster City Code is entitled "Conditions for granting special exceptions". That section states as follows:

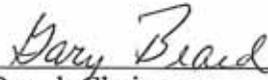
- A. The Board may grant a special exception when it finds from a preponderance of the evidence of record that:
 - (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan, or portion thereof, adopted by the Commission;
 - (2) The proposed use at the location selected will not:
 - (a) Adversely affect the health and safety of residents or workers in the area;
 - (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or
 - (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character, and number of similar uses; and
 - (3) The standards set forth for each particular use for which a special exception may be granted have been met.

- B. The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.

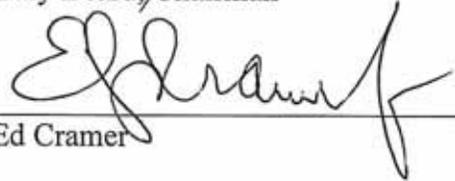
In reviewing the evidence of record, the Board has considered the factors set forth in the above sections. The Board finds that there is an abundance of evidence from which it concludes that the standards as set forth in those sections have been met, for the reasons articulated herein. The Board accepts the testimony of the Applicant as presented by C. Dean Smith, Ruben Bard, and Joseph Cronyn as credible, accurate and persuasive. In that regard, the testimony presented on behalf of the Applicant persuaded the Board that it has met its burden of proof required under the Westminster City Code for the requested special exception.

Based upon the testimony, the Board further finds that the proposed use will not adversely affect the health and safety of residents or workers in the area, that it will not overly burden existing public facilities and that it will not be detrimental to the use or development of adjacent properties or the general neighborhood. It also finds that the use would not adversely affect the general plan for the physical development of the district. Having concluded that the Applicant has met its burden of proof with respect to all of the above-referenced standards, the Board grants the special exception for a fueling facility in connection with the Giant grocery store on the Property consistent with the testimony and evidence of record, subject to the condition that the Applicant obtain all required federal, state and local permits and comply with all applicable laws and regulations relating to the operation of a fueling facility at this location.

Board of Zoning Appeals of Westminster



Gary Beard, Chairman



Ed Cramer

Date: June 14, 2010

BEFORE THE CITY OF WESTMINSTER BOARD OF ZONING APPEALS

IN THE MATTER OF:

*

**A SPECIAL EXCEPTION APPLICATION BY WEIS
MARKETS, INC. FOR A FUELING STATION AT
630 BALTIMORE BLVD., WESTMINSTER, MD.;
AND, IN THE ALTERNATIVE, AN APPEAL OF THE
DETERMINATION OF THE ZONING ADMINISTRATOR
THAT THE PROPOSED FUELING FACILITY
IS NOT ACCESSORY TO APPLICANT'S STORE**

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BZA CASE NO. A13-05

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**DECISION OF THE CITY OF WESTMINSTER
BOARD OF ZONING APPEALS**

The City of Westminster Board of Zoning Appeals (the "Board") heard BZA Case No. A13-05 at a meeting on Tuesday, January 28, 2014, at the Westminster Fire Company, 28 John Street, Westminster, Maryland. Sitting for the Board were Edward Cramer, Chairman, Daniel Hoff, Vice-Chairman, and Laura Matyas, Member. Karen P. Ruff served as attorney for the Board. Steve Horn, Zoning Administrator and Secretary to the Board, was also in attendance. At the meeting, the Board conducted a public hearing and deliberated regarding the captioned matter.

OVERVIEW

This case arises out of an Application for Special Exception, and, in the alternative an appeal of a determination of the Zoning Administrator, Case No. A13-05 (the "Application"), filed by Mr. John Maguire, Esq., on behalf of Weis Markets, Inc. (the "Applicant") on November 1, 2013. The Applicant requested a Special Exception under §164-42(S), subject to the provisions of §164-149 of the Westminster City Code, to establish a service station on their existing grocery store property located at 630 Baltimore Blvd. in Westminster, Maryland (the "Property"). See Application. The Applicant also requested, in the alternative, an Administrative Appeal seeking to reverse a determination by the City Zoning Administrator that a proposed fueling facility is not an accessory use to the Applicant's existing grocery store under Westminster City Code §164-41 (A)(1) and §164-3(A) ("Accessory Use").

The Applicant currently operates a grocery store on the Property. The Property is zoned "B" Business and is located near the north east quadrant of the intersection of MD 140 (Baltimore Blvd.) and Malcolm Drive in the City of Westminster. The Applicant proposes to construct a fueling facility on the Property consisting of six fueling positions and a kiosk. The Applicant asserts that the proposed fueling station is an accessory use to its existing grocery store on the Property. The Zoning Administrator determined that the fueling station is not an accessory use to the grocery store. The Applicant has appealed the Zoning Administrator's

determination and filed a request for a special exception to allow the proposed use on the Property.

NOTICE

As stated by Mr. Horn at the hearing, legal advertisements for the hearing ran in the Carroll County Times on Friday, January 3, 2014, Tuesday, January 14, 2014, and Tuesday, January 21, 2014; and, a "Notice of Hearing" sign was posted on the Property on Monday, January 13, 2014. Mr. Maguire affirmed, via signed affidavit presented at the hearing, that the sign remained properly displayed and maintained on the Property up to the time of the hearing. Certified mailings, including notice of the hearing, were sent to adjoining property owners on Tuesday, January 14, 2014, and it was noted that no comments were received. The Board finds that public notice was given and that the Property was posted in accordance with the requirements of §164-166 of the Westminster City Code. Further, all interested persons were given an opportunity to be heard at the public hearing which commenced and concluded on Tuesday, January 28, 2014. The Board, having considered all matters filed in the proceedings and evidence offered, and having deliberated in a public meeting, makes the following findings of fact and conclusions of law.

SUMMARY OF TESTIMONY

Representatives of the Applicant appeared before the Board on January 28, 2014, regarding the Application. John Maguire, Esq. represented the Applicant. After Mr. Horn submitted the file for the record and made some introductory remarks regarding the case, Mr. Maguire provided the Board with an introductory statement pertaining to the Administrative Appeal. He noted he would recommend proceeding with his first witness as it might assist the Board in its decision regarding the Administrative Appeal. In the event the Board denied the Appeal, he would then proceed to call his other witnesses. Members of the Board consented to this approach, and Mr. Maguire called Mr. Jack O'Hara, Vice President for Legal Affairs and Real Estate at Weis Markets, Inc. Mr. O'Hara testified in favor of allowing a fueling facility as an Accessory Use to a grocery store. He noted a growing trend of larger grocery store chains that include fueling stations as part of their business models (Giant Food, Kroger, and Safeway).

Mr. Maguire's second witness was William Robert Swanick, P.E., from HRG, Inc. Mr. Swanick testified as to the specific site development issues to be considered as part of the development of the site. Mr. Swanick was asked to review several site plan issues, including: landscaping, parking and traffic circulation, site ingress and egress, lighting, and storm water management. He also testified as to architectural elevations, pedestrian circulation, and how the overall shopping center would continue to satisfy parking requirements with the addition of the fueling facility.

Mr. Maguire's final witness was Mr. Joseph Cronyn, Real Estate Market analyst with Valbridge Property Advisors. Mr. Cronyn testified as to the contents of his report, entitled "Market Need Analysis, Weis Markets Fueling Station, 630 Baltimore Boulevard, Westminster, MD." Specifically, he was asked to quantify the public need for the service station, pursuant to §164-149

(4) of Westminster's City Code.

No one appeared in opposition to the request.

SPECIAL EXCEPTION CRITERIA

A special exception is a zoning mechanism that delegates to an administrative board authority to allow certain identified uses, uses which the legislative body has determined are allowed absent any fact or circumstance negating the presumption that the special exception use is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). Special exceptions are part of the City's comprehensive zoning plan. They are presumed to be correct or valid because the City governing body created them during the legislative process of defining zones and identifying the permitted and additional uses of each zone provided the additional uses meet the statutory requirements established by the governing body. *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.* 372 Md. 514, 541 (2002).

According to Westminster City Code, Chapter 164 "Zoning and Subdivision of Land," Article VIII "B" Business Zone, §164-42 "Special Exceptions," service stations may be permitted as special exceptions in accordance with the provisions of Article XXII of the Westminster City Code (Board of Zoning Appeals). Article XX "Special Provisions §164-149 Automobile service stations" provides the Board with specific instructions when considering a special exception request for service stations.

The general standards for granting a request for a special exception are set forth in Westminster City Code, §164-169 "Criteria for Determination" and §164-170 "Conditions for Grant of Special Exception." Section 164-169. A of the Westminster City Code provides, in pertinent part, as follows:

In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.

In reaching its decision, the Board may also consider various factors contained in Westminster City Code, Section 164-169 and the evidence presented relating thereto including:

- (1) The number of people residing or working in the immediate area concerned.
- (2) The orderly growth of a community,
- (3) Traffic conditions and facilities.
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.
- (5) The conservation of property values.
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.

- (7) The most appropriate use of land and structure.
- (8) Prior decisions of the courts regarding such matters.
- (9) The purpose of the regulations as set forth in this chapter.
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the city to supply such services.
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.
- (13) The preservation of cultural and historical landmarks.
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available, and the safe access of cars to highways or roads.
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods."

Section 164-170 of the Westminster City Code is entitled "Conditions for granting special exceptions". That section states as follows:

- A. The Board may grant a special exception when it finds from a preponderance of the evidence of record that:
 - (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan, or portion thereof, adopted by the Commission;
 - (2) The proposed use at the location selected will not:
 - (a) Adversely affect the health and safety of residents or workers in the area;
 - (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or
 - (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character, and number of similar uses; and,
 - (3) The standards set forth for each particular use for which a special exception may be granted have been met.
- B. The applicant for a special exception shall have the burden of proof, which shall

include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.

Section 164-149 of the Westminster City Code is entitled "Automobile service stations." The section states as follows:

- A. An automobile service station may be permitted upon a finding by the Board, in addition to the findings of Article XXII of this chapter, that:
- (1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.
 - (2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other buildings or proposed building on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of assembly.
 - (3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering the service required, the populations, character, density and number of similar uses.
 - (4) The evidence of record establishes that for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City and that the use at the location proposed will not result in a multiplicity of proposed uses. In the absence of convincing evidence to the contrary, the following shall constitute a lack of probability of a reasonable public need:
 - (a) An automobile service station within one mile on the same side of the road, except at intersections.
 - (b) The presence of two service stations within the four quadrants of an intersection, including $\frac{1}{2}$ mile from the center of the intersection in any direction.
 - (5) The proposed use will be conducted upon a lot having a minimum area of 20,000 square feet, provided that this size is adequate to meet the necessary services and the setback and buffering requirements, and a

minimum lot frontage of 120 feet on a public road shall be required for each automobile service station site.

- (6) The lot shall contain landscaping on a minimum of 10 percent of the site area.
- B. In addition, the following requirements shall be met:
- (1) When such abuts a residential zone or industrial premises not recommended for reclassification to commercial or industrial zone on an adopted Master Plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, slightly, solid fence not less than five (5) feet in height, together with a three-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Screening shall not be required on street frontage.
 - (2) Signs, product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways shall be prohibited.
 - (3) Lighting shall be designed and controlled so that any light source, including the interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators or vehicles moving on public or private roads, highways or parking areas. Such lighting shall not shine on or reflect on or into residential structures.
 - (4) All gasoline service station developments shall meet City off-street parking standards to ensure the safe movement of vehicles and pedestrians. The arrangement of structures, islands, driveways, parking and landscaping shall be designed so as to ensure maneuvering ease, to serve the community and not to adversely affect adjacent properties.
 - (5) Driveways shall be designed and located to ensure a safe and efficient movement of traffic on and off the site from the lane of traffic nearest the curb. The design, location and construction of all vehicular access driveways shall be in accordance with the applicable specifications and standards of the Department of Public Works.
 - (6) Gasoline pumps or other service appliances shall be located on the lot at least ten (10) feet behind the building line, and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall normally be at least twenty (20) feet between driveways on each street, and all driveways shall be perpendicular to the curb or street line unless the Planning Director

determines that those configurations would present an unreasonable risk to vehicular and pedestrian traffic and grants a modification of those requirements which would eliminate or minimize such risks.

- (7) Vehicles shall not be parked so as to overhang the public right-of-way.

FINDINGS OF FACT

In reviewing the evidence before it, the Board makes the following findings of fact: the proposed use will be located on property zoned "B" Business and owned by Weis Markets, Inc.; there are no lease restrictions prohibiting the proposed use; the facility is proposed to be constructed on the north east quadrant of the intersection of MD 140 (Baltimore Boulevard) and Malcolm Drive at 630 Baltimore Boulevard, Westminster, Maryland; vehicular access to the Property is by way of two common access driveways located on Malcolm Drive and two interparcel connector access points from westbound MD 140; the facility will be self-serve only; the facility will offer gasoline only - no diesel fuel will be available at this facility; no vehicle repair will be offered at this facility; the facility will offer 6 fueling stations and a small vending area; hours of operation are 6 AM to Midnight; no traffic study was performed at the location – only ITE Trip Generation estimates were provided.

The Board is concerned about traffic patterns in and around the site. Accordingly, the Board finds that it is imperative that the Planning and Zoning Commission carefully consider traffic circulation patterns as part of the site development plan review and approval.

The Board rejects the arguments made in support of the Administrative Appeal. The Board finds that there is no discernible difference between a fueling service as proposed, and a service station as defined in the Westminster City Code. In addition, the Board finds that §164-149 Automobile service stations, is determinative of the fact that service station uses are not recognized by the Westminster City Code as "customarily incidental" to grocery stores.

The Board accepts the testimony of those testifying in support of the Application as credible and accurate. In that regard, the testimony presented on behalf of the Applicant, including the written statement, documents, reports and verbal testimony, persuaded the Board that the Applicant has met the burden of proof required under the Westminster City Code for the requested Special Exception. The Board finds that there is no evidence that the proposed use will have an adverse impact on the health and safety of residents or workers in the area or overburden public facilities.

The Board finds that there is an abundance of evidence from which it concludes that the standards, as set forth in the Westminster City Code Article XX Special Provisions, §164-149 Automobile service stations, Article XXII Board of Zoning Appeals, §164-169 Criteria for determination and §164-170 Conditions for grant of special exceptions, have been met.

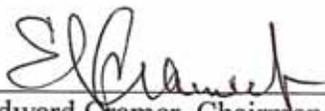
CONCLUSIONS OF LAW

With regard to the Administrative Appeal, the Board is not persuaded by testimony and evidence presented that a fueling station should be allowed as an accessory use to a grocery store. To the contrary, the Board cites Westminster City Code §164-149 Automobile service stations, as establishing the specific criteria for the allowance of service stations as special exceptions only, and denies the Administrative Appeal.

Based upon the evidence and testimony presented, the Board unanimously finds that, with the imposition of certain conditions to ensure compliance with Chapter 164 of the Westminster City Code, the Application meets all of the applicable criteria for a special exception for a fueling facility on the Property, and the proposed use will not adversely affect the health and safety of residents or workers in the area, overly burden existing public facilities or be detrimental to the use or development of adjacent properties or the general neighborhood. It also finds that the use would not adversely affect the general plan for the physical development of the district. Having concluded that the Applicant has met its burden of proof with respect to all of the above-referenced standards, the Board grants the special exception for a fueling facility on the Property in accordance with the documentation and information presented to the Board, with the following conditions:

1. The City's Planning and Zoning Commission shall consider the overall impact of the proposed fueling facility on traffic patterns within the site as well as between adjoining, interconnected sites while paying particular attention to the northernmost intersection on Malcolm Drive.

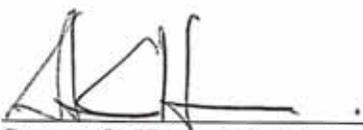
Board of Zoning Appeals



Edward Cramer, Chairman

Date: 4/24/14

ATTEST:



Steven C. Horn, Secretary

BZA 16-03 Staff Memo

Re: An application by Gary Troy, of 337 Moores Branch Circle, Westminster, Maryland 21158 for approval of a special exception for a Private, Indoor Recreational Facility use at Lot 21B, Magna Way, Westminster MD, pursuant to Article X: I-R Restricted Industrial Zone, Section 164-54.K Special exceptions, Section 164-155.2 Private, Indoor Recreational Facilities, and Section 164-3 Definitions and word usage, and Article XXII of the City Code.

To: City of Westminster Board of Zoning Appeals

From: Bill Mackey, AICP, Planning Director

Date: February 26, 2016

I. History and Facts

In January 2016, an application was submitted to the Board of Zoning Appeals (BZA), for a special exception use at Lot 21B on Magna Way. The zoning is I-R (Restricted Industrial), and SDAT records indicate the property is owned by South Carroll Properties, LLC, at 1393 Progress Way, Suite 902, Eldersburg MD 21784-6473.

II. Required Notice

On February 5, 2016, Notices of Hearing were sent via certified mail to adjoining property owners. On February 7, 2016, a Notice of Hearing appeared in the *Carroll County Times*. On February 8, 2016, a copy of the agenda was posted on the City's website. On February 12, 2016, the property was posted with a Zoning Notice sign. On February 17, 2016, a Notice of Hearing was sent via certified mail to the property owner. On February 21, 2016, a Notice of Hearing appeared in the *Carroll County Times*. These notices met the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meetings Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to the § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The *2009 Comprehensive Plan* includes a variety of goals related to recreational facilities in the City. The proposed private, indoor recreational facility may be considered as a Tourism component for the City. The excerpted language, goal and objectives below are in Chapter 10: Tourism & Culture.

Community Vision for Tourism. Shopping, dining and entertainment opportunities that attract visitors to a city also attract future residents. When someone considers moving to Westminster, they not only look at housing and job opportunities, but they also look at the quality of overall choices in entertainment and recreation. Potential residents want to move to diverse communities that offer a variety of options to occupy their leisure time, such as ice skating, bowling, dinner theatres, art galleries, and dog parks. Also, potential companies prefer to locate in an area where there is a good quality of life to offer to their employees.

Section 4: Sports Tourism. ... The overall vision of the Sports Tourism Strategy is to host tournaments, camps and clinics that would bring visitors and revenue to Westminster.

In addition to the economic benefits for direct service businesses ... building a sports' tourism industry for the Westminster area will have numerous positive impacts for the City. These positive impacts include increased community spirit, the development of a highly skilled volunteer base, and increased positive exposure for Westminster and Carroll County.

Goal C2: Partner with the Carroll County Tourism Office to enhance the image and identity of Westminster as an attractive destination in the travel marketplace.

Objective 1: Encourage cooperation among the key assets and businesses that provide recreational and cultural attractions for local residents, as well as visitors.

a. Identify Westminster's key assets and local retail, recreation and cultural businesses that support the tourism and entertainment economy of Westminster.

Objective 2: Increase length of stay and spending of visitors to the Westminster area.

(2) The proposed use at the selected location will not:

(a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

The proposed private, indoor recreational facility is a new use. The applicant will be asked to submit water usage at other locations with similar uses for analysis. Considering the proposed use is for students, it is expected that the facilities will not be used at full capacity except during competitive events. The applicant is responsible for all costs related to connecting to utilities.

Prior to site plan approval by the City and the County, public roads, storm drainage, stormwater management and related issues must be addressed. Site plan approval is required by Planning and Zoning Commission. Permitting and construction cannot begin without site plan approval.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of review, staff recommends the neighborhood as the immediately vicinal properties (see attached map). The property borders the Westminster municipal boundary. Properties located to the east of the site are zoned R-40,000, by Carroll County. Properties to the south, west and north are zoned I-R (Restrict Industrial) and are within the City limits.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

The specific standards for private, indoor recreational facilities are reviewed under Section V below.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*
 - (1) *The number of people residing or working in the immediate area concerned.*
 - (2) *The orderly growth of a community.*
 - (3) *Traffic conditions and facilities.*
 - (4) *The effect of such use upon the peaceful enjoyment of people in their homes.*
 - (5) *The conservation of property values.*
 - (6) *The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.*
 - (7) *The most appropriate use of land and structure.*
 - (8) *Prior decisions of the courts regarding such matters.*
 - (9) *The purpose of the regulations as set forth in this chapter.*

(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

(11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Specific requirements for Private, Indoor Recreational Facilities under § 164-155.2

Private, indoor recreational facilities may be permitted as a special exception upon approval by the Board in accordance with the provisions of this Code, provided that the following standards and requirements are met below. An exception to §164-140 is noted under provision C below.

- A. Private, indoor recreational facilities may only be located on a lot no greater than 3 acres.

This particular private, indoor recreational facility is proposed for location on a 2.39 acre lot.

- B. Such private facilities may only be designed for a capacity of no greater than 320 persons.

Testimony related to the capacity of the facility is anticipated to be presented by the applicant. The Board may want to impose a condition related to the testimony, since a building of 20,000 square feet as an assembly use could legally be occupied by more than 320 persons and meet the national fire code for assembly uses with the properly designed fire exits, sprinklers, etc.

- C. Such private facilities are not subject to the additional distance requirement in § 164-140.

The distance requirement of 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care does not apply.

- D. Notwithstanding any other provision, such facilities shall comply with or exceed required parking standards for recreation facilities and centers under § 164-111 with no reductions.

Per §164-111, Recreation facilities and centers, the City Code requires 1 space per 4 persons of estimated facility capacity, plus 1 space per employee and 1 space per facility vehicle and piece of mobile equipment. Testimony by the applicant on parking requirements is anticipated. The proposed concept plan includes 101 parking spaces with four spaces indicated for accessibility.

VI. Conclusion

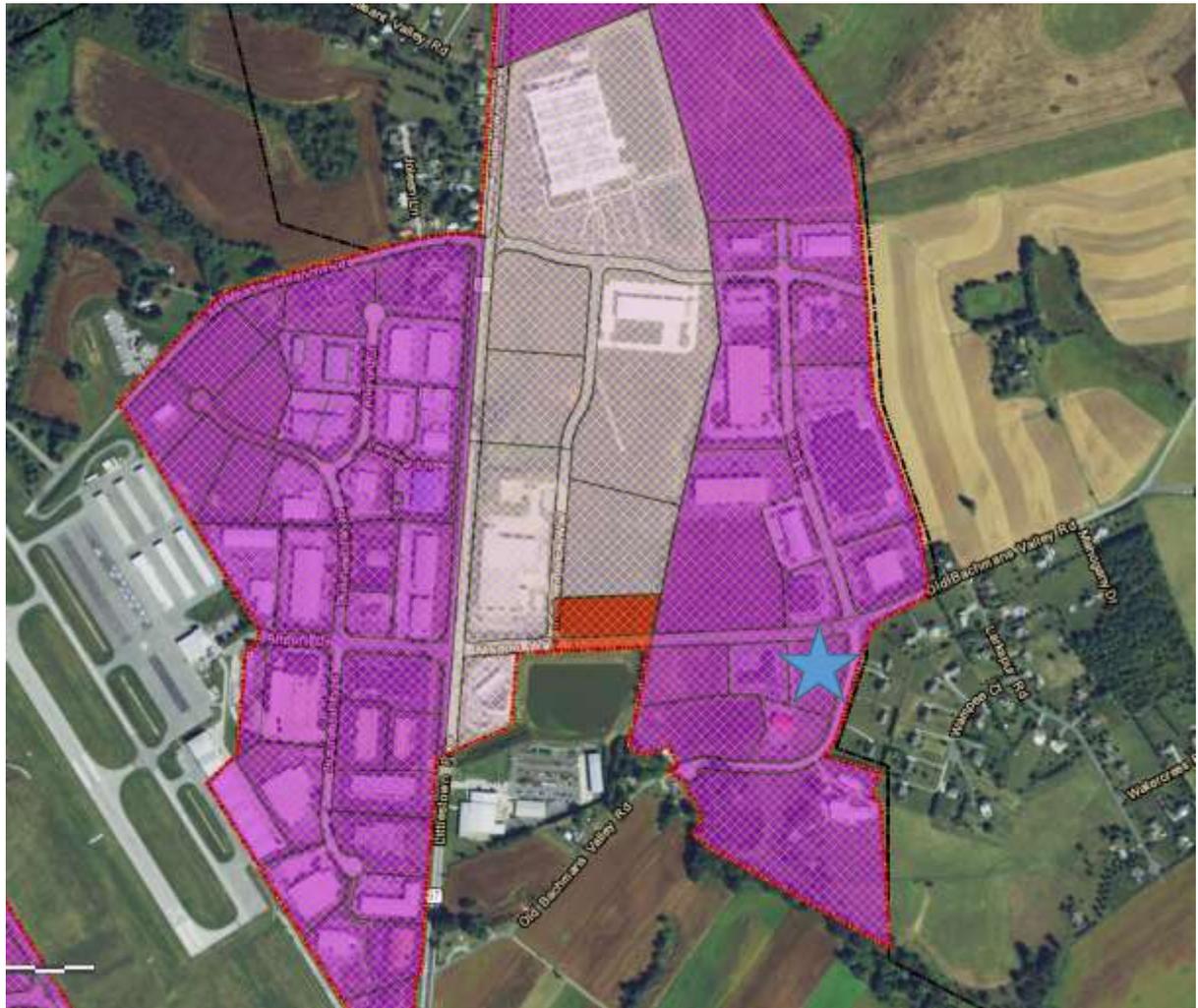
Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

City staff recommends that the Board consider approval of this special exception for a private, indoor recreational facility with the condition that the Applicant is bound by all of the testimony and evidence of record in implementing this decision and shall also comply with any additional conditions, restrictions or requirements included by the Planning and Zoning Commission during its site plan review process.

Attachments

- map of possible area for neighborhood, related to § 164-170 A(2)(c)
- adopted Ordinance No. 861 for private, indoor recreational facilities

City of Westminster Zoning



Legend



I-R = Restricted Industrial



B = Business

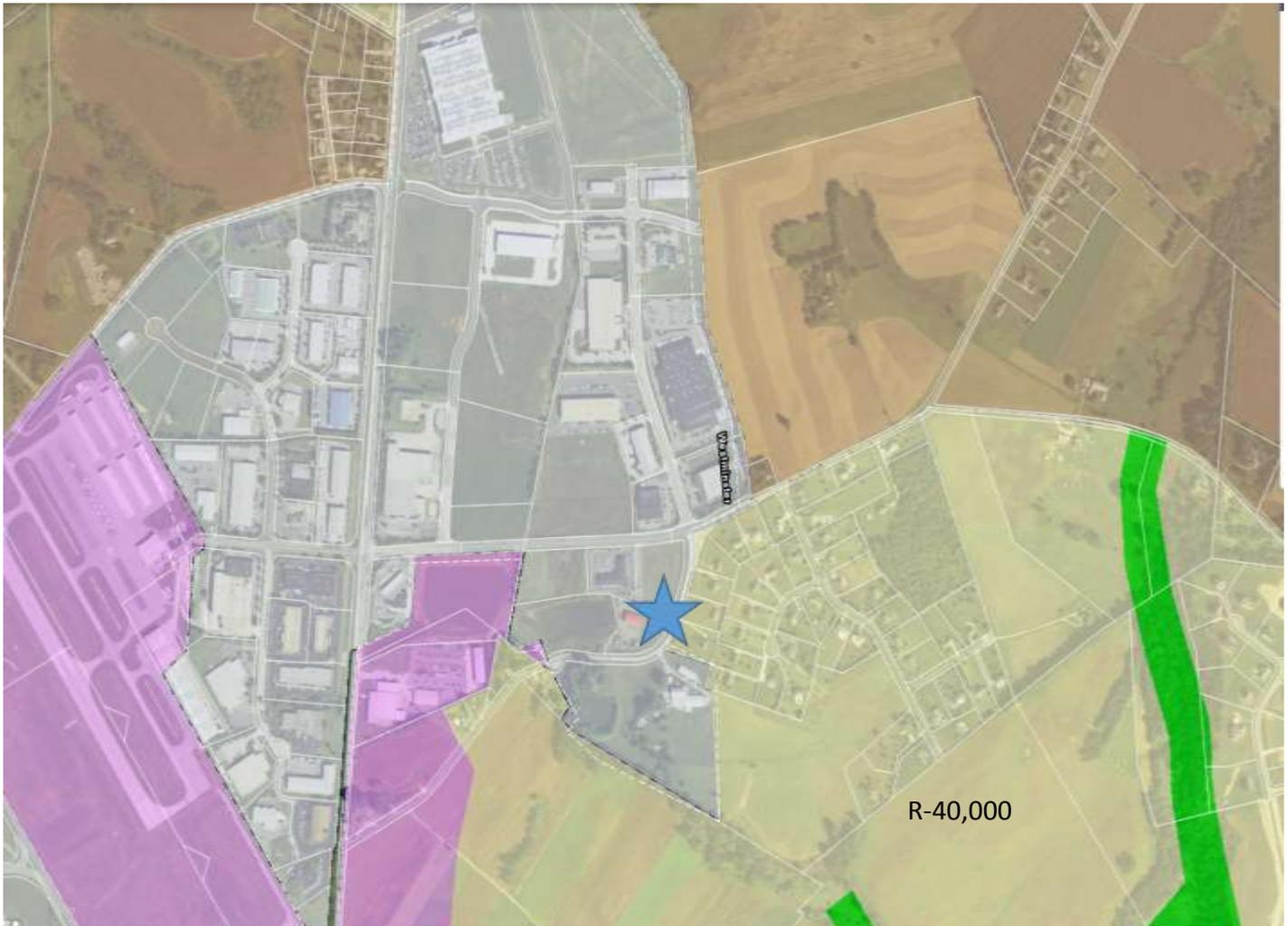


Corporate Limit



Site

Carroll County Zoning



Legend

 I-R

 R-40,000

 AG

 Corporate Limit

 Site

ORDINANCE NO. 861

AN ORDINANCE AMENDING CHAPTER 164, "ZONING AND SUBDIVISION OF LAND", OF THE CODE OF THE CITY OF WESTMINSTER, ARTICLE I, "GENERAL PROVISIONS", SECTION 164-3, "DEFINITIONS AND WORD USAGE", TO PROVIDE A DEFINITION OF "PRIVATE, INDOOR RECREATIONAL FACILITIES," AND AMENDING CHAPTER 164, ARTICLE X, "I-R RESTRICTED INDUSTRIAL ZONE", TO ALLOW PRIVATE, INDOOR RECREATIONAL FACILITIES AS SPECIAL EXCEPTIONS WITHIN THE "I-R RESTRICTED INDUSTRIAL ZONE" AND AMENDING ARTICLE XX, "SPECIAL PROVISIONS" BY ADDING A NEW SUB-SECTION 164-155.2, "PRIVATE, INDOOR RECREATIONAL FACILITIES."

WHEREAS, pursuant to Md. Code Ann., Local Gov't Art., § 5-213 (formerly Art. 23A, § 2(b)), the Mayor and Common Council of Westminster, Maryland (the "City") have the authority to provide reasonable zoning regulations subject to the referendum of the voters at regular or special elections; and

WHEREAS, pursuant to Sections 11 through 18 of the City Charter, the City has, for the purpose of promoting the health, security, general welfare and morals of the community, the authority to divide the City into zoning districts and to regulate therein the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land, in accordance with a comprehensive plan and for enumerated purposes, which include the control and direction of municipal expansion and development, provided that such regulations are to be made with reasonable consideration of the character of the districts and their peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, pursuant to the aforesaid authority and the additional authority contained in Md. Code Annotated, Land Use Article, Division 1, "Single Jurisdiction Planning and Zoning," Title 4, "Zoning" (formerly, Md. Code Ann., Art. 66B, § 4.01 et seq.), the City has enacted Chapter 164, "Zoning", of the City Code; and

WHEREAS, pursuant in accordance with Chapter 164, Section 164-177.A, and Section 164-180, the City's Planning Commission is charged with reviewing proposed amendments to the text of that chapter and submitting a report and recommendation to the Mayor and Common Council with respect to such proposed amendments; and

<u>Bold Underlining</u>	Indicate matter added to existing law.
<u>[] Bold Brackets</u>	Indicate matter deleted from existing law.
*** asterisks	Indicate matter retained in existing law but omitted herein.

WHEREAS, the Planning and Zoning Commission considered an application for a proposed text amendment to allow private, indoor volleyball facilities within the I-R Restricted Industrial Zone; and

WHEREAS, on September 10, 2015, the Planning and Zoning Commission voted to recommend for approval to the Mayor & Common Council of a text amendment to allow private, indoor recreational facilities as a special exception use within the I-R Restricted Industrial Zone; and

WHEREAS, the City's Director of Community Planning and Development recommends that the City enact the text amendments, as proposed herein, which were developed based on the Planning and Zoning Commission's discussion and recommendation for approval; and

WHEREAS, the City concurs that the proposed text amendments to add a new special exception use provides a reasonable process to review a private, indoor recreational facility, since the special exception process includes specific limits and requirements as well as a required review for consistency with the City's adopted comprehensive plan as part of the process; and

WHEREAS, the City deems the proposed text amendments to Chapter 164 of the City Code, Articles I, X, and XX to be consistent both with the request by the applicant and with the recommendation of the Planning and Zoning Commission; and

WHEREAS, the Common Council has determined that the public interest will be best served by the passage and approval of the text amendments as described herein.

Section 1: NOW THEREFORE BE IT ENACTED AND ORDAINED by the Mayor and Common Council of Westminster, that Chapter 164, "Zoning", of the Westminster City Code, Article I, "General Provisions", § 164-3, "Definitions and Word Usage", shall be and hereby is amended as follows:

§ 164-3. Definitions and Word Usage.

A. For the purpose of this chapter, certain words and phrases used herein are defined as follows:

ACCESS:

A means of approach or admission.

* * *

PRIVATE, INDOOR RECREATIONAL FACILITIES

<u>Bold Underlining</u>	Indicate matter added to existing law.
<u>[] Bold Brackets</u>	Indicate matter deleted from existing law.
<u>*** asterisks</u>	Indicate matter retained in existing law but omitted herein.

Rooms and/or buildings that are designed for recreational use as sports facilities and operated by a private non-governmental entity such as for-profit, commercial business or private, non-profit. Such facilities do not include outdoor uses and are not included in the accounting for any required environmental open space and/or recreational open space.

* * *

Section 2: BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Common Council of Westminster, that Article X, "I-R Restricted Industrial Zone", §164-54, "Special Exceptions", shall be and hereby is amended as follows:

§ 164-54. Special exceptions.

The following uses may be permitted as a special exception in accordance with the provisions of Article XXII:

A. Any use permitted in § 164-41A (7), (9), (11), (17), (19), (33), (35), [(36)], (39), (40), (41), (42), (45), (47) and (48).

* * *

K. Private, Indoor Recreational Facilities subject to the requirements of § 164-155.2.

Section 3: BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Common Council of Westminster, that Article XX, "Special Provisions" shall be and is hereby amended to add a new §164-155.2, "Private, Indoor Recreational Facilities" as follows:

§ 164-155.2 Private, Indoor Recreational Facilities

Private, indoor recreational facilities may be permitted as a special exception upon approval by the Board in accordance with the provisions of this Code, provided that the following standards and requirements are met below. An exception to §164-140 is noted under provision C below.

- A. Private, indoor recreational facilities may only be located on a lot no greater than 3 acres.
- B. Such private facilities may only be designed for a capacity of no greater than 320 persons.
- C. Such private facilities are not subject to the additional distance requirement in § 164-140.
- D. Notwithstanding any other provision, such facilities shall comply with or exceed required parking standards for recreation facilities and centers under § 164-111 with no reductions.

Bold Underlining

Indicate matter added to existing law.

[] Bold Brackets

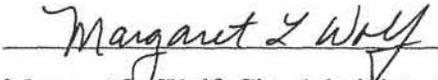
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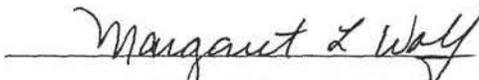
Indicate matter retained in existing law but omitted herein.

Section 4: Be it further enacted and ordained by The Mayor and Common Council of Westminster that this Ordinance shall take effect (10) ten days after its passage and approval.

INTRODUCED this 9th day of November, 2015.


Margaret L. Wolf, City Administrator

PASSED this 14th day of December, 2015.


Margaret L. Wolf, City Administrator

APPROVED this 14th day of December, 2015.


Kevin R. Utz, Mayor

APPROVED AS TO FORM AND SUFFICIENCY

This 14th day of December, 2015:


Elissa D. Levan, City Attorney

Bold Underlining Indicate matter added to existing law.
[] Bold Brackets Indicate matter deleted from existing law.
***** asterisks** Indicate matter retained in existing law but omitted herein.

BZA 16-06 Staff Memo

Re: An application by FR Conversions Inc., requesting approval of a special exception for a proposed restaurant and lunchroom, without drive-through service use at 1231 Tech Court, Westminster, pursuant to Article X: I-R Restricted Industrial, Section 164-54.A, Special Exceptions, of the City Code.

To: City of Westminster Board of Zoning Appeals

From: William A. Mackey

Date: September 30, 2016

I. History and Facts

On September 2, 2016, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 1231 Tech Court. The zoning is I-R Restricted Industrial. The Maryland State Department of Assessments and Taxation online records indicate the property is owned by 1231 Tech Court, LLC.

II. Required Notice

On September 11, 2016, a Notice of Hearing appeared in the *Carroll County Times*. On September 12, a Notice of Hearing was sent via certified mail to the property owner and adjoining property owners. On September 23, the property was posted with a Zoning Notice sign. On September 25, a Notice of Hearing appeared in the *Carroll County Times*. On September 27, 2016, a copy of the agenda was posted on the City's website. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meetings Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

[The 2009 Comprehensive Plan sets goals including: Goal E2, Objective 3: "Support the retention and expansion of existing businesses, while exploring opportunities for new business development."](#)

The applicant's proposal appears to be supported by the *2009 Comprehensive Plan*, Goal E2, Objective 3.

(2) The proposed use at the selected location will not:

(a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception for restaurant and lunchroom without drive-through service at this particular location.

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues related to public infrastructure with the proposed special exception for restaurant and lunchroom without drive-through service at this particular location.

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties that are zoned I-R Restricted Industrial, and located adjacent to and across the street from 1231 Tech Court, within the City of Westminster.

The special exception use is proposed on property in the I-R Restricted Industrial zone. The property borders the Westminster municipal boundary. Property located to the east of the proposed use is outside of the City and is currently zoned as Agricultural by Carroll County.

(3) The standards set forth for each particular use for which a special exception may be granted have been met.

There are no specific requirements for restaurants or lunchrooms as special exception uses.

Per § 164-158, the proposed use is subject to § 164-140, **Distance requirements**, which states: "Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care." The proposed use is over 100 feet from the property line.

Per § 164-171 B., the proposal must meet the City's parking requirements contained in Article XVI. The application is for a special exception in an existing building with an existing parking lot.

On February 9, 2016, the Board of Zoning Appeals issued a decision granting a special exception for 1231 Tech Court, LLC, noting the applicant's statement that future parking for 1,000 vehicles would be needed on site, if the plant were to reach full capacity of 10,000 conversions annually.

Thus, the company vehicle parking appears to be 10% of production, per applicant's testimony. The applicant also stated that production for 2016 was expected to be about 5,800 conversions.

Parking Analysis

The existing parking lot contains 275 marked parking spaces per aerial photography records.

The existing building is 152,000 square feet in area. About 22,000 square feet is in office use, and the remaining area is manufacturing use. The application states there are 65 employees.

Per § 164-111, the current parking requirements for the existing uses on the site are as follows:

Use	Ratio	Required Spaces
Office, business	1 for each 250 square feet of floor area or 2 per office, whichever is greater (22,000 square feet)	88 spaces
Manufacturing	1 per 1 1/2 employees on a major shift, plus 1 per company vehicle and piece of mobile equipment (65 employees and 580 company vehicles on site)	623 spaces

It appears that if the anticipated production goals are being met, then the vehicle storage needs in conjunction with the amount of current employees may result in a parking deficit on the site.

It would also appear that having customers visit the site to pick-up meals would pose a problem.

The applicant should address the current parking supply and demand as part of the testimony.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*
 - (1) *The number of people residing or working in the immediate area concerned.*
 - (2) *The orderly growth of a community.*
 - (3) *Traffic conditions and facilities.*
 - (4) *The effect of such use upon the peaceful enjoyment of people in their homes.*
 - (5) *The conservation of property values.*

(6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.

(7) The most appropriate use of land and structure.

(8) Prior decisions of the courts regarding such matters.

(9) The purpose of the regulations as set forth in this chapter.

(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

(11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Conclusion and Additional Consideration

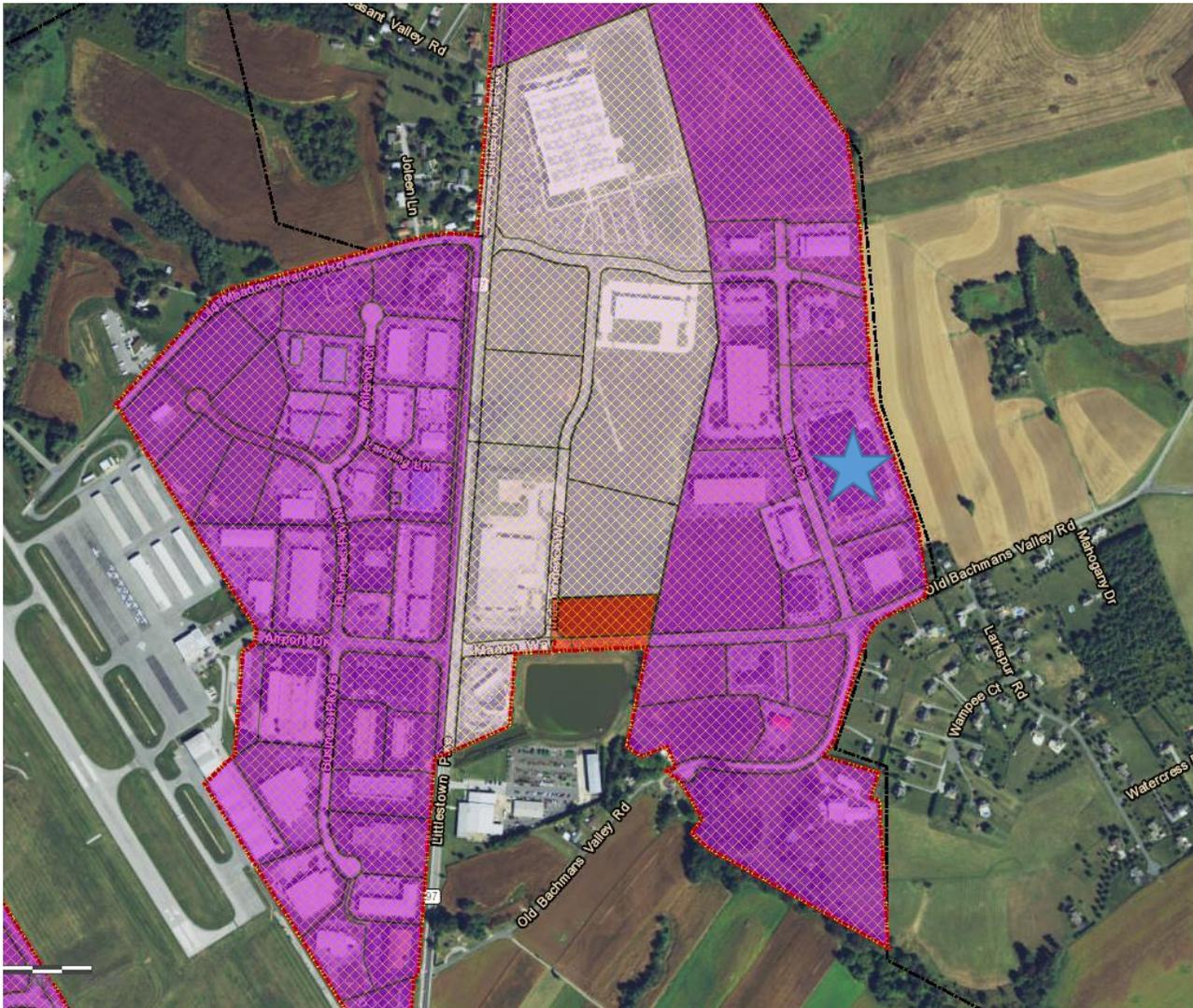
Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

City staff recommends that the Board of Zoning Appeals consider approval of the proposed special exception with the condition that only off-site delivery service be approved for this restaurant use.

Attachments

- sub-exhibit map related to § 164-170 A. (2)(c)
- Signed decision for Case 16-01 on 2016-02-16

City of Westminster Zoning



Legend

 I-R = Restricted Industrial

 Site

 P-I = Planned Industrial

 B = Business

 Corporate Limit

IN THE MATTER OF:

Applicant: FR Conversions, Inc.

**Property: 1231 Tech Court
Westminster, MD 21157**

Application for Special Exception

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BOARD OF ZONING APPEALS

CITY OF WESTMINSTER, MD

Case No. 16-01

* * * * *

**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 16-01 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals" or the "Board") on December 4, 2015, by FR Conversions, Inc. (the "Applicant"), through its affiliated company 1231 Tech Court LLC, owner of the property located at 1231 Tech Court, Westminster, Maryland 21157, the parcel identified as Tax Map 0113, Grid 0011, Parcel P.4836, Lot 2 (hereinafter referred to as the "Property"), for a special exception pursuant to §164-54A and §164-170A of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for an automobile sales and service facility in the I-R Restricted Industrial Zone; and

WHEREAS, the Applicant's request for a special exception was made to allow a portion of its current building on the Property to be used for automobile sales and service, supplementing the primary use of manufacturing conversion vehicles, without any proposed new construction; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on January 5, 2016, in Town Hall, City of Westminster, Maryland, to consider Application No. 16-01. At the conclusion of the January 5, 2016 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 16-01 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 16-01, that a special exception to allow the use of the Property for automobile sales and service, in addition to the manufacturing use currently allowed as of right on the Property, is hereby **GRANTED, subject to the following condition set forth below:**

1. The sales and service of automobiles shall be limited to those vehicles manufactured (or 'converted') on the Property.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The Application for special exception (Exhibit 2) was filed on December 4, 2015.
2. In anticipation of the January 5, 2016 hearing, the Property was posted with a sign notice of hearing on December 21, 2015, notice was published in the Carroll County Times newspaper on December 14th and December 28, 2015, and certified letters were mailed to adjacent property owners on December 15, 2015. The agenda for the meeting included a reference to Case 16-01 and was posted on the City's website on December 18, 2015. The Board finds that the notice requirements of §164-166 have been met.
3. No request for inspection of the Property in accordance with §164-166E was received.
4. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.

5. No persons testified or offered evidence at the hearing against the special exception request. Other than the Application for a special exception and a pre-hearing statement submitted by the Applicant, no other pre-hearing submissions were accepted into the record.

Substantive Findings:

6. The Property is located in the I-R Restricted Industrial Zone of the City of Westminster.
7. The Applicant is a second-stage manufacturer for vehicles on the Property, which is a use as a matter of right within the I-R Restricted Industrial Zone. The Applicant is affiliated with 1231 Tech Court LLC, the owner of the Property.
8. The Property is developed with a 150,000+ square foot building which was previously the General Dynamics Robotics plant.
9. The Property is located within the Westminster Technology Park. It is bounded on the north and south by developed light industrial, business park style buildings. To the immediate west of the Property is Tech Court, a public right of way, and across that street are other light industrial, business park buildings. To the immediate east of the Property is the Westminster City boundary and agricultural use property.
10. As shown on the first photograph of Exhibit 2 and Exhibits 4 and 5, the neighborhood is typified by development consistent with a business or technology park, with some residential neighborhoods located outside the immediate vicinity to the southeast (south of Old Bachmans Valley Road and which are outside of the Westminster City limits).
11. The Applicant wants to supplement its manufacturing operation with automobile sales and services of the manufactured conversion vehicles. As shown on Exhibit 9, this will occur within a small portion of the existing building. Pursuant to §164-54A, automobile sales and services is a special exception use in the I-R Restricted Industrial Zone.

12. To qualify for a special exception for automobile sales and services, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for special exceptions in §164-170. There are no specific requirements for automobile sales and services in the zoning ordinance.

13. §164-170A requires a finding that:

“1.The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

14. The 2009 Comprehensive Plan includes a variety of goals related to economic development including Goal E5, which is to “Foster the competitive workforce needed for the future of Westminster’s economy.” The proposed special exception use supports this goal and the general goals of the 2009 Comprehensive Plan by adding additional jobs. The automobile sales and service use is consistent with other uses permitted in the I-R Restricted Industrial Zone so long as there are no adverse impacts, and there was no evidence of adverse impacts.

15. The vast majority of the Property is and will remain in service to the manufacturing operations of the Applicant. The intensity of that manufacturing use has expanded and is

projected to continue to expand. The Applicant built approximately 92 conversions in 2012, 214 in 2013, 1450 in 2014, 2,900 in 2015. The Applicant expects to double the production of 2015 this year (2016) and projects that the facility can reach a maximum of 10,000 manufactured conversions a year. The Applicant currently employs approximately 60 people and at maximum operations would employ approximately 400. If the manufacturing reaches 10,000 conversions a year, the Applicant will require parking for approximately 1,000 vehicles. Currently there is regular truck traffic onto the Property in service of the manufacturing, but otherwise the traffic volume on Tech Court is minimal. Although the Applicant may eventually run the manufacturing operation on a 24 hour basis, the deliveries for shipping and receiving will continue to be during the daytime hours only. All of the impacts described above are related to the current manufacturing use, which is a use by right under the zoning ordinance.

16. The Applicant manufactures conversion vehicles primarily for sale to dealers, but there are some sales to end users and if the Applicant holds more than 100 vehicles for such a purpose, the Motor Vehicle Administration requires that they receive a dealer's license. The regulatory process for obtaining a dealer's license requires certification of zoning compliance, thereby leading to the present request for a special exception. Having a dealer's license is necessary for assisting the Applicant with automobile finance and to facilitate dealer tags on the vehicles (necessary for regulatory compliance). The Applicant will not be operating a traditional auto sales lot, but instead will sell some of its manufactured vehicles to end users. The automobile sales will be a small scale and will not have a significant impact on the scale or intensity of operations on the Property, especially in comparison with the

significant activities dedicated to the manufacturing use. The Applicant described visits to the Property by individual buyers as occurring “once in a blue moon”.

17. There was no evidence of any adverse impacts to the health and safety of residents or workers in the area caused by the proposed automobile sales and service use and the Board finds that it would not create such adverse impacts. There is sufficient distance from the residential uses to the southeast of the Property (outside the Westminster Technology Park).
18. There was no evidence that the proposed automobile sales and service use would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not. The number of people living in the area will not change. There will not be a significant increase in vehicular traffic to the Property caused by adding the automobile sales and service use. The roads serving the Property are adequate to handle the very minor increase in volume that would be occasioned by on-site sales, considering they are adequate for the current manufacturing use. Tech Court connects to Magna Way, which is the main thoroughfare to reach Route 97. The traffic to and from Route 97 is therefore contained to the Westminster Technology Park and does not impact surrounding residential areas. There is sufficient parking on the Property to add the automobile sales and service special exception use. The Applicant acknowledged that additional parking may be needed for the manufacturing operation if they reach 10,000 units per year, but any additional parking needed will not be a result of the special exception use.
19. The Board finds that there was no evidence that the proposed automobile sales and service use would be detrimental to the use or development of adjacent properties or the general neighborhood. The Board finds that the proposed automobile sales and service use, as an adjunct to the current manufacturing use, is consistent with the neighborhood and the

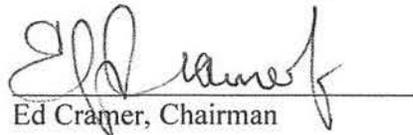
industrial development pattern in the I-R Restricted Industrial Zone and will not change the character of the general neighborhood, considering the services required, at the time of the application, the population, density, character and number of similar uses.

20. Therefore, based upon the above findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on January 5, 2016. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 9th day of February, 2016. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland


Ed Cramer, Chairman



To: City of Westminster Board of Zoning Appeals

From: Andrew R. Gray, Comprehensive Planner

Cc: Bill Mackey, AICP, Planning Director

Date: March 3, 2017

Subject: BZA 17-01 Staff Memo

An application by Macro Restaurant Group, LLC., requesting approval of a special exception for a proposed drive-through eating establishment use at 400 North Center Street, Westminster, pursuant to Article XV: PRSC Planned Regional Shopping Center Zone, Section 164-101.F., Special Exceptions, of the City Code

I. History and Facts

On January 24, 2017, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 400 North Center Street. The zoning is PRSC: Planned Regional Shopping Center Zone. The Maryland State Department of Assessments and Taxation online records indicate the property is owned by Cranberry Mall Properties, LLC.

II. Required Notice

On February 1, 2017, a Notice of Hearing was sent via certified mail to the property owner and adjoining property owners. On February 5, 2017, a Notice of Hearing appeared in the Carroll County Times. On February 10, 2017, the property was posted with a Zoning Notice sign. On February 26, 2017, a Notice of Hearing appeared in the *Carroll County Times*. On March 3, 2017, a copy of the agenda was posted on the City's website. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meeting Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The *2009 Comprehensive Plan* sets goals including:

Goal E2, Objective 3 is to: "Support the retention and expansion of existing businesses, while exploring opportunities for new business development."

The applicant's proposal appears to be supported by Goal E2, Objective 3.

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

The applicant should address the traffic flow for the proposed use.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues related to the granting of this special exception request at this particular location related to public infrastructure. The applicant is proposing to modify an existing drive-through component to a restaurant use.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties. These properties are zoned as the following:

North: I-G: General Industrial by Carroll County (across MD 27)

South: PRSC: Planned Regional Shopping Center (across Center Street)

East: PRSC: Planned Regional Shopping Center PD-9: Planned Development 9, and R-10,000

West: B: Business and I-R: Restricted Industrial (across MD 140)

The special exception use is proposed on property in the PRSC: Planned Regional Shopping Center Zone. The property includes the Town Mall of Westminster and existing pad sites.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

There are no specific requirements are set forth for the particular use.

Per § 164-158, the proposed use is subject to § 164-140, Distance requirements, which states:

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.

The building is over 100 feet from the nearest, adjacent lot.

Per § 164-171 B., the proposal must meet the City's parking requirements contained in Article XVI. The application is for a special exception on an existing building pad site with an existing parking lot. For restaurants and lunchrooms, the parking requirements are 1 per 4 seats, plus 1 per 2 employees. Currently, there appears to be 25 parking spaces (please see attachment 2).

The new development will remove 12 parking spaces and add ten canopy-covered, parking spaces. These ten spaces are designed so customers can place and consume their orders while in their vehicles. The new total of all parking spaces on site would appear to be 28.

The applicant should address parking requirements related to on-site spaces required for seats that are proposed to be located inside the restaurant as well as the proposed number of employees.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

A. In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.

B. In deciding such matters, the Board may consider the following factors, together with other relevant factors:

(1) The number of people residing or working in the immediate area concerned.

(2) The orderly growth of a community.

(3) Traffic conditions and facilities.

(4) The effect of such use upon the peaceful enjoyment of people in their homes.

(5) The conservation of property values.

(6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.

(7) The most appropriate use of land and structure.

(8) Prior decisions of the courts regarding such matters.

(9) The purpose of the regulations as set forth in this chapter.

(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

(11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Conclusion and Additional Consideration

Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

[City staff recommends that the Board of Zoning Appeals approve the proposed Special Exception.](#)

Attachments

- sub-exhibit map related to § 164-170 A. (2)(c)
- existing parking satellite view

City of Westminster Zoning



Legend



I-R = Restricted Industrial



PRSC: Planned Regional Shopping Center



Site



PD-9: Planned Development – 9 Zone



C: Conservation



B = Business



R-10,000



Corporate Limit

Existing Parking on Site



Summary

Address: 400 Center Street

29 Existing Spots

28 Proposed

- 10 canopy-covered, parking space
- 18 Spaces

Applicant has provided a proposed site plan which includes proposed parking configuration.



To: City of Westminster Board of Zoning Appeals

From: Andrew R. Gray, Comprehensive Planner

Cc: Bill Mackey, AICP, Planning Director

Date: September 29, 2017

Subject: BZA 17-03 Staff Memo

An application by Erik E. Barvir, requesting approval of a special exception for a proposed **conversion dwellings** use at 113 Pennsylvania Avenue, Westminster, pursuant to Article VII: R-7,500, Section 164-36. B., Special Exceptions, of the City Code.

I. History and Facts

On September 1, 2017, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 113 Pennsylvania Avenue. The zoning is R-7,500 Residential. The Maryland State Department of Assessments and Taxation online records indicate the property is owned by Apex Contracting LLC.

II. Required Notice

On September 6, a copy of the agenda was posted on the City's website. On September 10, 2017, a Notice of Hearing appeared in the Carroll County Times. On September 11, 2017, a Notice of Hearing was sent via certified mail to the property owner and adjoining property owners. On September 12, 2017, the property was posted with a Zoning Notice sign. On September 17, a Notice of Hearing appeared in the *Carroll County Times*. These notices were provided to meet the notification requirements set forth in § 164-166 of the City Code and the Maryland Open Meetings Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The 2009 Comprehensive Plan sets goals including:

Goal H1, Objective 2 is to: "Promote infill development and other redevelopment options on underutilized residential or commercial lots."

The applicant's proposal appears to be supported by Goal H1, Objective 2.

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues related to the granting of this special exception request at this particular location related to public infrastructure.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties. These properties are zoned as the following:

North: R-7,500 Residential

South: R-7,500 Residential

East: R-7,500 Residential

West: R-7,500 Residential

The average land area per dwelling unit according to the Maryland Department of Assessments and Taxation is:

Address	Number of Units	Land Area	Land Area Per Unit
115 Pennsylvania Avenue	One	6,120	6,120
112 Pennsylvania Avenue	One	11,848	11,848
110 Pennsylvania Avenue	Three	5,940	1,980
111 Pennsylvania Avenue	One	3,036	3,036
41 Union Street	Nine	22,702	2,522
45 Union Street	One	1,066	1,066

47 Union Street	One	1,030	1,030
Subject Property			
113 Pennsylvania Avenue	Two	11,827	5,914

It appears there are properties in the surrounding area that contain more than one dwelling unit. From the Information above, it appears the density of dwelling units per square foot of land area for the proposed conversion dwelling use is less than the average of 3,943 for the surrounding properties.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

According to § 164-3 of the City Code, the definition of Dwelling, Conversion is *a building existing at the time of enactment of this chapter which may be converted or altered to accommodate two or more families, as a rental facility, condominium or cooperative, subject to regulations prescribed by § 164-150...*

According to the Maryland Department of Assessments and Taxation, the primary structure was built in 1800 well before the zoning code was adopted in 1979. (SDAT Information Attached)

Per § 164-150 Conversion Dwellings must meet the following criteria.

In the R-7,500, B, D-B and C-B Zones, a dwelling may be converted to provide additional dwelling units upon a finding by the Board, in addition to those required in Article XXII of this chapter, that:

- A. There will be off-street parking in accordance with the parking standard for multiple-family units as provided in § 164-111C, and the location of said spaces when occupied by motor vehicles will not obstruct or impede the safe movement of vehicles and pedestrians or be parked so as to overhang in the public right-of-way.

Per § 164-111C of the City Code, Multiple-family units require *1 space per efficiency unit; 1 1/2 per 1-bedroom unit; 2 for 2- or more-than-2-bedroom units.* (Attached)

According to drawings submitted to the Board, the first floor will have three bedrooms and the second floor will also have three bedrooms. According to the City Code, the property would be required to have four off-street parking spots.

Currently, there would not appear to be any off-street parking spaces provided for this property. There is an old structure located in the rear of the yard; however, the doors appear to be too narrow for vehicular access. Testimony should include how this existing structure could help support the required off-street parking requirements. Additionally, one additional off-street parking space would be required, per City Code, if the Board determines the existing structure is suitable for vehicular use. If the structure is not suitable for vehicular use, four off-street parking spaces will need to be provided per City Code.

- B. The maximum number of dwelling units permitted in any conversion dwelling in the B, D-B or C-B Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 3,500. The maximum number of dwelling units in the R-7,500 Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 5,000.

The Property is located in the R-7,500 zone. The Maryland State Department of Assessments and Taxation records indicate the property has a land area of 11,827 square feet. 11,827 square feet divided by 5,000 (per City Code) is 2.37. The two dwelling unit proposal would be allowed per City Code.

- C. The structure sought to be converted is not enlarged or expanded more than 30% of the floor area of the dwelling existing prior to conversion.

The applicant has indicated that no changes would be made except for installing a *new demising wall in the foyer to properly separate the units along with marked interior walls for bedroom division and closets*. Testimony should confirm these are the only changes being made to the property. The applicant has also indicated the property is currently utilized as a two-unit dwelling.

- D. Each proposed dwelling unit shall meet the minimum square foot requirements of the Minimum Livability Code as contained in Carroll County Ordinance No. 70.

The attached *References to Ordinances* list shows what sections of Carroll County Code are contained in County Ordinance No. 70. The highlighted areas of the County Code reference the required square feet for living spaces, as contained in Chapter 171: Livability Code (attached).

Per § 164-158, the proposed use is subject to § 164-140, Distance requirements, which states:

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.

It would not appear that this provision is applicable to a conversion dwelling use, since a conversion dwelling use is itself a residential use. It would seem that this provision is assumed to refer to only special exceptions that are non-residential themselves.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*

B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*

(1) The number of people residing or working in the immediate area concerned.

(2) The orderly growth of a community.

(3) Traffic conditions and facilities.

(4) The effect of such use upon the peaceful enjoyment of people in their homes.

(5) The conservation of property values.

(6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.

(7) The most appropriate use of land and structure.

(8) Prior decisions of the courts regarding such matters.

(9) The purpose of the regulations as set forth in this chapter.

(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

(11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Conclusion and Additional Consideration

Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

City staff recommends that the Board of Zoning Appeals approve the proposed Special Exception use with the condition that four parking spaces be provided as required by City Code.

Attachments

- Sub-exhibit map related to § 164-170 A. (2)(c)
- Maryland Department of Assessments and Taxation – Real Property Search for Account # 07-067909
- Article XVI: Off-Street Parking and Loading (Page #2)
- References to Ordinances (Carroll County)
- Chapter 171: Livability Code (Carroll County) (§171.037)

City of Westminster Zoning



Legend



R - 7,500 Residential



D-B - Downtown Business



R - 10,000 Residential



Site

Real Property Data Search (w1)

Search Result for CARROLL COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration				
Account Identifier:		District - 07 Account Number - 067909							
Owner Information									
Owner Name:		APEX CONTRACTING LLC			Use:		RESIDENTIAL		
Mailing Address:		4110 SEQUOIA DR WESTMINSTER MD 21157-7826			Principal Residence:		NO		
					Deed Reference:		/08590/ 00096		
Location & Structure Information									
Premises Address:		113 PENNSYLVANIA AVE WESTMINSTER 21157-0000			Legal Description:		LT - 11827 SF 113 PENNSYLVANIA AVE WESTMINSTER		
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0102	0018	1633		0000				2018	
Special Tax Areas:		Town:			WESTMINSTER				
		Ad Valorem:							
		Tax Class:							
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area		County Use	
1800		2,568 SF				11,827 SF			
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation			
2	YES	STANDARD UNIT	SIDING	2 full	1 Detached				
Value Information									
		Base Value		Value		Phase-in Assessments			
				As of		As of		As of	
				01/01/2015		07/01/2017		07/01/2018	
Land:		77,200		77,200					
Improvements		109,600		109,600					
Total:		186,800		186,800		186,800			
Preferential Land:		0							
Transfer Information									
Seller: US BANK NA			Date: 01/23/2017			Price: \$89,500			
Type: NON-ARMS LENGTH OTHER			Deed1: /08590/ 00096			Deed2:			
Seller: SACCENTE STEVE			Date: 01/20/2016			Price: \$204,000			
Type: NON-ARMS LENGTH OTHER			Deed1: /08206/ 00246			Deed2:			
Seller: LIPPY DOROTHY L			Date: 02/10/2006			Price: \$180,000			
Type: ARMS LENGTH IMPROVED			Deed1: /04764/ 00024			Deed2:			
Exemption Information									
Partial Exempt Assessments:		Class		07/01/2017		07/01/2018			
County:		000		0.00					
State:		000		0.00					
Municipal:		000		0.00		0.00			
Tax Exempt:				Special Tax Recapture:					
Exempt Class:				NONE					
Homestead Application Information									
Homestead Application Status: No Application									
Homeowners' Tax Credit Application Information									
Homeowners' Tax Credit Application Status: No Application					Date:				

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

Parking Standards

Type of Use

(number of spaces)

Multiple-family units

1 per efficiency unit; 1 1/2 per 1-bedroom unit; 2 for 2- or more-than-2-bedroom units

Multiple-family housing for older persons

1 1/2 per dwelling unit up to 2 bedrooms, 2 per dwelling unit with more than 2 bedrooms

Nonresidential

Airparks, airports and fields requirements. Land uses incidental to air flights are subject to other parking standards contained in this chapter.

Subject to state and federal site

Animal hospitals, veterinary clinics and kennels

1 per employee, plus 1 per business vehicle, plus 1 for each 300 square feet of floor space used for hospital, clinic, office, storage or other purposes

Automobile service stations

2 per bay and 1 per employee shift

Barbershops and beauty shops

1 per employee, plus 2 per each chair

Bowling centers

4 per lane and 1 per employee

Churches, parish houses or other places of worship

1 for each 3 fixed seats, provided that the number of spaces required may be reduced by up to 50% if the place of worship is within 500 feet of any public parking lot or commercial parking lot where sufficient spaces are available, by permission of the owner(s) without charge, during the time of services to make up the additional spaces required

REFERENCES TO ORDINANCES

Ord. No.	Date Passed	Description
57	2-18-1986	<u>52.001—52.003, 52.015—52.032, 52.045, 52.046, 52.060—52.066, 52.080—52.090, 52.999</u>
26C	7-29-1986	<u>90.01—90.03, 90.05, 90.07, 90.14, 90.99</u>
60	9-16-1986	<u>110.01</u>
70	9-29-1988	<u>171.001—171.008, 171.020—171.022, 171.035—171.037, 171.050—171.055, 171.070—171.074, 171.085—171.088, 171.100—171.105, 171.120—171.123, 171.135, 171.136, 171.150—171.153, 171.165, 171.180—171.183, 171.195—171.204, 171.215, 171.999</u>
71	11-10-1988	<u>94.001—94.003, 94.015—94.017, 94.030—94.036, 94.050—94.052, 94.054—94.057, 94.070, 94.072—94.084, 94.095—94.097, 94.110—94.113, 94.999</u>
26D	8-28-1990	<u>90.01—90.03</u>

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For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

make screening impractical.

(5) **Door hardware.** Every exterior door and its hardware shall be maintained in good condition. Door locks on all interior and exterior doors entering dwelling units shall be in good repair and capable of tightly securing the door.

(2004 Code, § 141-13) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.037 INTERIOR OF BUILDING.

(A) **Interior surfaces.** Floors, walls, windows, doors, ceilings, and other interior surfaces shall be maintained in good repair and in a clean, safe, and sanitary condition.

(B) **Bathroom and kitchen floors.** Every toilet, bathroom, and kitchen floor surface shall be substantially impervious to water and capable of being maintained in a clean, safe, and sanitary condition.

(C) **Exit doors.** Every door available as an exit shall be maintained capable of being opened easily from the inside and providing unimpeded egress.

(D) **Exit facilities.** All stairs, railings, and other exit facilities of a building shall be structurally sound, kept in good repair and capable of being used in a safe manner.

(E) **Space requirements.**

(1) **Bedroom.** Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor area for each occupant thereof.

(2) **Kitchen.** Every kitchen shall contain at least 50 square feet of floor area.

(3) **Living room.** Every dwelling unit having three or more occupants shall provide a living room containing at least 120 square feet of floor area.

(4) **Dining room.** Every dwelling unit having three or more occupants shall provide a dining room containing at least 80 square feet of floor area.

(5) **Combined spaces.** Combined living room, dining room, and bedroom spaces shall comply with the requirements of divisions (E)(1), (E)(3), and (E)(4) above if the total area is equal to that required for separate rooms and if the space is so located that it functions as a combination living/dining/bedroom.

(F) **Prohibited uses.** Kitchens, bathrooms, and combined nonhabitable public and common areas shall not be used for sleeping purposes.

(2004 Code, § 141-14) (Ord. 70, passed 9-29-1988)

LIGHT, VENTILATION, AND UTILITY REQUIREMENTS

§ 171.050 LIGHTING REQUIREMENTS.

(A) **General.** All spaces shall be provided with natural or artificial light as to permit the maintenance of sanitary conditions, and the safe use of the space, appliances, equipment, and fixtures.

(B) **Common halls and stairways.** Every common hall and stairway, including exterior stairways, of a premises shall be provided with natural or artificial light with an average illumination equivalent to not less than three foot-candles over the area at a height of 30 inches above the floor level and one foot-candle at landings and treads.

(C) **Habitable areas.** All habitable areas in a building shall be provided with natural or artificial light with an average illumination equivalent to not less than six foot-candles over the area of the room at a height of 30 inches above the floor level.

(D) **Nonhabitable areas.** Every hall, laundry room, furnace room, interior stairwell in a building, except as set forth in division (B)



To: City of Westminster Board of Zoning Appeals

From: Andrew R. Gray, Comprehensive Planner

Cc: Bill Mackey, AICP, Planning Director

Date: January 5, 2018

Subject: BZA Case# 18-01 Staff Memo

An application by Ms. Angela Zepp-Million, the property owner, requesting approval of a special exception for a proposed **day-care facility for up to eight children** located at 925 Wampler Lane, Westminster, pursuant to Article VI: R-10,000 Residential Zone, Section 164-30. G., Special Exceptions, of the City Code.

I. History and Facts

On November 9, 2017, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 925 Wampler Lane. The zoning is R-10,000 Residential. The Maryland State Department of Assessments and Taxation online records indicate the property is owned by Robert N. Sprinkle, Jr. and Angela Zepp-Million.

II. Required Notice

On November 28, 2017, a Notice of Hearing was sent via certified mail to the subject property owner and adjoining property owners. On December 8, 2017, a copy of the agenda was posted on the City's website. On December 15, 2017, the property was posted with a Zoning Notice sign. On December 17, 2017, a Notice of Hearing appeared in the *Carroll County Times*. On December 24, 2017, a second Notice of Hearing appeared in the *Carroll County Times*. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meeting Act. As of the date of this staff report, the City has not received a written request for inspection of the property, pursuant to § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The 2009 Comprehensive Plan sets goals including:

Goal F2, "Encourage the provision of quality child care services in locations that are convenient to Westminster residents and employees."

The applicant's proposal appears to be supported by Goal F2.

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

The applicant would address how the facility will be able to accommodate the increase of two children associated with the proposed expanded use.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known concerns related to overburdening existing public services with the proposed special exception use at this particular location. That being said, as a result of the City's temporary water suspension, this proposed use, if it were to be approved, would not be eligible for operation, until after a new water allocation for the expansion were secured by the applicant.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties. These properties are zoned as the following:

North: R-10,000 Residential

South: R-10,000 Residential

East: R-10,000 Residential

West: R-10,000 Residential

The special exception use is proposed on property in the R-10,000 Residential zone.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

There are no specific requirements set forth for the particular use.

Per § 164-158, the proposed use is subject to § 164-140, Distance requirements, which states:

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.

The building is less than 100 feet from the nearest, adjacent lot. The proposed use would be part of a single-family home and it would seem that this provision is assumed to refer only to special exceptions that are non-residential themselves. The Board would determine if the proposed use would be appropriate at this particular residential location.

Per § 164-171 B., the proposal must meet the City's parking requirements contained in Article XVI (Attached). The application is for a special exception use within an existing single-family detached residential dwelling, with an existing driveway. The existing *single-family detached...* unit, parking requirement is *2 spaces per dwelling unit, minimum of 9 x 18 feet in size per space*, per § 164-111 of the City Code.

The applicant is currently applying for a *day-care facility for up to eight children...* It would appear the parking requirement most closely related to this use in § 164-111 of the City Code would be for *Home Occupations*. *Home Occupations* require *1 space in addition to spaces devoted to use by the residents*.

Currently, there appears to be a nine foot by thirty-foot driveway contained on the property. Testimony could confirm the exact dimensions of the driveway contained on the property. Two off-street parking spaces would be required for the existing single-family detached residential dwelling unit, and one off-street parking space would be required for the proposed day-care facility. The total amount of off-street parking spaces required by the City Code would appear to be three.

The applicant would address parking requirements related to on-site spaces and how they are proposing to meet the requirements in the City Code. If the Board were to find that the layout of the driveway were sufficient to park three vehicles in this situation, the Board could consider approving the existing driveway as sufficient for providing parking for three cars. In general, home occupations are intended to blend with their existing context and surrounding residential neighborhood settings.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*

- (1) The number of people residing or working in the immediate area concerned.*
- (2) The orderly growth of a community.*
- (3) Traffic conditions and facilities.*
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.*
- (5) The conservation of property values.*
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.*
- (7) The most appropriate use of land and structure.*
- (8) Prior decisions of the courts regarding such matters.*
- (9) The purpose of the regulations as set forth in this chapter.*
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.*
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.*
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.*
- (13) The preservation of cultural and historical landmarks.*
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.*
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.*

V. Conclusion and Additional Consideration

Pursuant to § 164- 170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

City staff recommends that the Board of Zoning Appeals carefully consider approval of the proposed Special Exception with the conditions that off-street parking requirements will be met, the proposed structure will be able to safely accommodate the proposed expanded day-care use, and that all proper licensing will be obtained by the applicant.

Attachments

- Sub-exhibit map related to § 164-170 A. (2)(c)
- Article XVI, Off-Street Parking and Loading

City of Westminster Zoning



Legend



R - 10,000 Residential



Site

ARTICLE XVI
Off-Street Parking and Loading

§ 164-111. General provisions and requirements.

- A. For the following uses of buildings hereinafter erected or increased from the size existing at the time of the adoption of this chapter, off-street parking facilities which are outside the public right-of-way shall be required as provided herein.
- B. Parking standards. Off-street parking facilities shall be provided for uses in zones, must not be more than 300 feet in distance from an entrance to said uses, shall accommodate normal parking requirements and shall meet the standards listed below.
- C. Parking facilities in Central Business Zone; benefit assessment charge and annual maintenance fee. As to all construction or uses, including residential uses, commenced in the Central Business Zone after the effective date of this section, to the extent that the Planning Director determines that the size, configuration or other physical characteristic of the site of the planned use makes it impossible for the user to meet the standards in this section, thereby creating a hardship, the Planning Director may, in the Planning Director's discretion, upon application from the user, allow a reduction in the number of spaces; provided, however, that the user shall pay the City a one-time benefit assessment charge and an annual maintenance fee for each space the user is not able to provide under the standards in this section as provided in the General Fee Ordinance.¹ **[Amended 2-27-1995 by Ord. No. 594; 4-14-1997 by Ord. No. 617; 9-24-2001 by Ord. No. 672; 7-12-2004 by Ord. No. 718; 1-28-2008 by Ord. No. 774; 11-24-2008 by Ord. No. 792]**

Parking Standards

Type of Use	(number of spaces)
Residential	
Single-family detached and semidetached	2 per dwelling unit, minimum of 9 x 18 feet in size per space
Single-family attached	3 per dwelling unit, minimum of 9 x 18 feet in size per space

1. Editor's Note: See Ch. A175, Fees, Art. I, General Fees.

Parking Standards

Type of Use

(number of spaces)

Commercial establishments devoted to retail sales, trade, merchandising or similar uses not otherwise specified herein	1 for each 250 square feet of floor area used for retail sales, trade or merchandising, and 1 for each 300 square feet of floor space used for office, storage or other purposes
Convents and monasteries	1 for each 250 square feet of floor space, plus 1 per institutional vehicle
Country clubs, private clubs, social clubs and fraternal organizations	1 per 4 persons of estimated facility capacity, plus 1 per employee and 1 per facility vehicle and piece of mobile equipment
Fire stations, rescue stations and ambulance services	1 per 1 1/2 employees on a major shift, plus 1 per facility vehicle, plus 1 per piece of mobile equipment, plus 1 for visitor's use per 5 employees on the maximum shift
Food stores, supermarkets and roadside stands	1 per 200 square feet of floor area devoted to customer service
Funeral homes and mortuaries	1 for each 100 square feet of floor area devoted to assembly room purposes, plus 1 per 2 employees, plus 1 for each vehicle used in connection with the business
Furniture and appliance stores and repair shops	1 per 500 square feet of floor area, plus 1 for each employee
Government buildings and public buildings	1 for each 250 square feet of floor area or 2 per office, whichever is greater
Home occupations	1 in addition to spaces devoted to use by the residents



To: City of Westminster Board of Zoning Appeals

From: Andrew R. Gray, Comprehensive Planner

Cc: Bill Mackey, AICP, Planning Director

Date: November 30, 2018

Subject: BZA Case# 18-06 Staff Memo

An application by Mr. Michael Brecker, on behalf of LMJB Properties, LLC, the property owner, requesting approval of a special exception for two proposed **conversion dwellings** located at **269 East Green Street**, Westminster, pursuant to Article VIII B: D-B Downtown Business, Section 164-45.9 A. (10), Special Exceptions, of the City Code.

I. History and Facts

On November 1, 2018, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 269 East Green Street. The zoning is D-B: Downtown Business. The Maryland State Department of Assessments and Taxation online records indicate the property is owned by LMJB PROPERTIES LLC.

II. Required Notice

On November 9, 2018, a copy of the agenda was posted on the City's website. On November 11, 2018, a Notice of Hearing appeared in the Carroll County Times. On November 12, 2018, a Notice of Hearing was sent via certified mail to the property owner and adjoining property owners. On November 13, 2018, the property was posted with a Zoning Notice sign. On November 18, 2018, a second Notice of Hearing appeared in the Carroll County Times. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meeting Act. As of the date of this staff report, the City has not received a written request for inspection of the property, per § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The 2009 Comprehensive Plan sets goals including:

Goal H1, Objective 2: "Promote infill development and other redevelopment options on underutilized residential or commercial lots."

The applicant's proposal appears to be supported by Goal H1, Objective 2.

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to health and safety associated with the proposed special exception use at this particular location.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues related to the granting of this special exception request at this particular location related to public infrastructure. The applicant will have to apply for and receive a water and sewer allocation for the proposed additional residential unit, if the Board approves such use. There is a queue for allocations.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties. These properties are zoned as the following:

North: D-B: Downtown Business

South: D-B: Downtown Business

East: D-B: Downtown Business

West: D-B: Downtown Business

The special exception use is proposed on property in the D-B: Downtown Business zone.

It would appear that a large accessory building is located in the rear yard. Testimony should address if this structure is for the current and/or proposed residential use and how this would impact the property and the neighborhood.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

According to § 164-3 of the City Code, the definition of Dwelling, Conversion is *a building existing at the time of enactment of this chapter which may be converted or altered to accommodate two or*

more families, as a rental facility, condominium or cooperative, subject to regulations prescribed by § 164-150...

According to the Maryland Department of Assessments and Taxation, the primary structure was built circa 1925, which is before the current zoning code was enacted in 1979. (SDAT Information Attached)

Per § 164-150, Conversion Dwellings must meet the following criteria.

In the R-7,500, B, D-B and C-B Zones, a dwelling may be converted to provide additional dwelling units upon a finding by the Board, in addition to those required in Article [XXII](#) of this chapter, that:

- A. There will be off-street parking in accordance with the parking standard for multiple-family units as provided in § [164-111C](#), and the location of said spaces when occupied by motor vehicles will not obstruct or impede the safe movement of vehicles and pedestrians or be parked so as to overhang in the public right-of-way.

Per § 164-111C of the City Code, Multiple-family units require 1 space per efficiency unit; 1 1/2 per 1-bedroom unit; 2 for 2- or more-than-2-bedroom units. (Attached)

According to the pre-hearing statement submitted to the Board on November 19, 2018, the first floor will have a one-bedroom unit and the second floor will have a one-bedroom unit.

According to the Code, the property would be required to provide three off-street parking spaces for the two residential units. Testimony should include how the existing parking facility in the rear of the proposed conversion dwelling will accommodate three parking spaces and if any parking is required for any other uses that may be associated with the accessory building located in the rear yard of the property. A parking diagram may be helpful in providing the Board and the City a better understanding of how the parking spaces may be configured in order to make sure the proposal conforms to Article XVI: Off-Street Parking and loading. Staff has attached an aerial and a rear street view image of the property and also the parking diagram contained in § 164-115 D. to assist the Board.

- B. The maximum number of dwelling units permitted in any conversion dwelling in the B, D-B or C-B Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 3,500. The maximum number of dwelling units in the R-7,500 Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 5,000.

The property is located in the D-B: Downtown Business zone. The Maryland State Department of Assessments and Taxation records indicate the property has a land area of 11,880 square feet. 11,880 square feet divided by 3,500 (per City Code) is 3.39. The two dwelling units proposed would be allowed under this provision in the Code.

- C. The structure sought to be converted is not enlarged or expanded more than 30% of the floor area of the dwelling existing prior to conversion.

The applicant has indicated in the pre-hearing statement that the proposal is *to return the property,... to a two (2) family dwelling*. According to building permit application BP-18-1792, submitted to the City on September 10, 2018, the work will include: a new kitchen and laundry for the 2nd floor apartment, a closet and partition wall, and two doorways on the first floor. Testimony should address the changes being made to the property. BP-18-1792 is attached for more information.

- D. Each proposed dwelling unit shall meet the minimum square foot requirements of the Minimum Livability Code as contained in Carroll County Ordinance No. 70.

The attached *References to Ordinances* list shows what sections of Carroll County Code are contained in County Ordinance No. 70. The highlighted areas of the County Code reference the required square feet for living spaces, as contained in Chapter 171: Livability Code (attached). Testimony should address how the applicant will meet the minimum area requirements in the Minimum Livability Code (Carroll County Ordinance No. 70).

Per § 164-158, the proposed use is subject to § 164-140, Distance requirements, which states:

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.

It would appear that this provision is not applicable to a proposed conversion dwelling use, since a conversion dwelling use is itself a residential use. It would seem that this provision is assumed to refer only to special exceptions that are non-residential. The Board may wish to discuss this principle, if needed.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*

(1) The number of people residing or working in the immediate area concerned.

- (2) The orderly growth of a community.*
- (3) Traffic conditions and facilities.*
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.*
- (5) The conservation of property values.*
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.*
- (7) The most appropriate use of land and structure.*
- (8) Prior decisions of the courts regarding such matters.*
- (9) The purpose of the regulations as set forth in this chapter.*
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.*
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.*
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.*
- (13) The preservation of cultural and historical landmarks.*
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.*
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.*

V. Conclusion and Additional Consideration

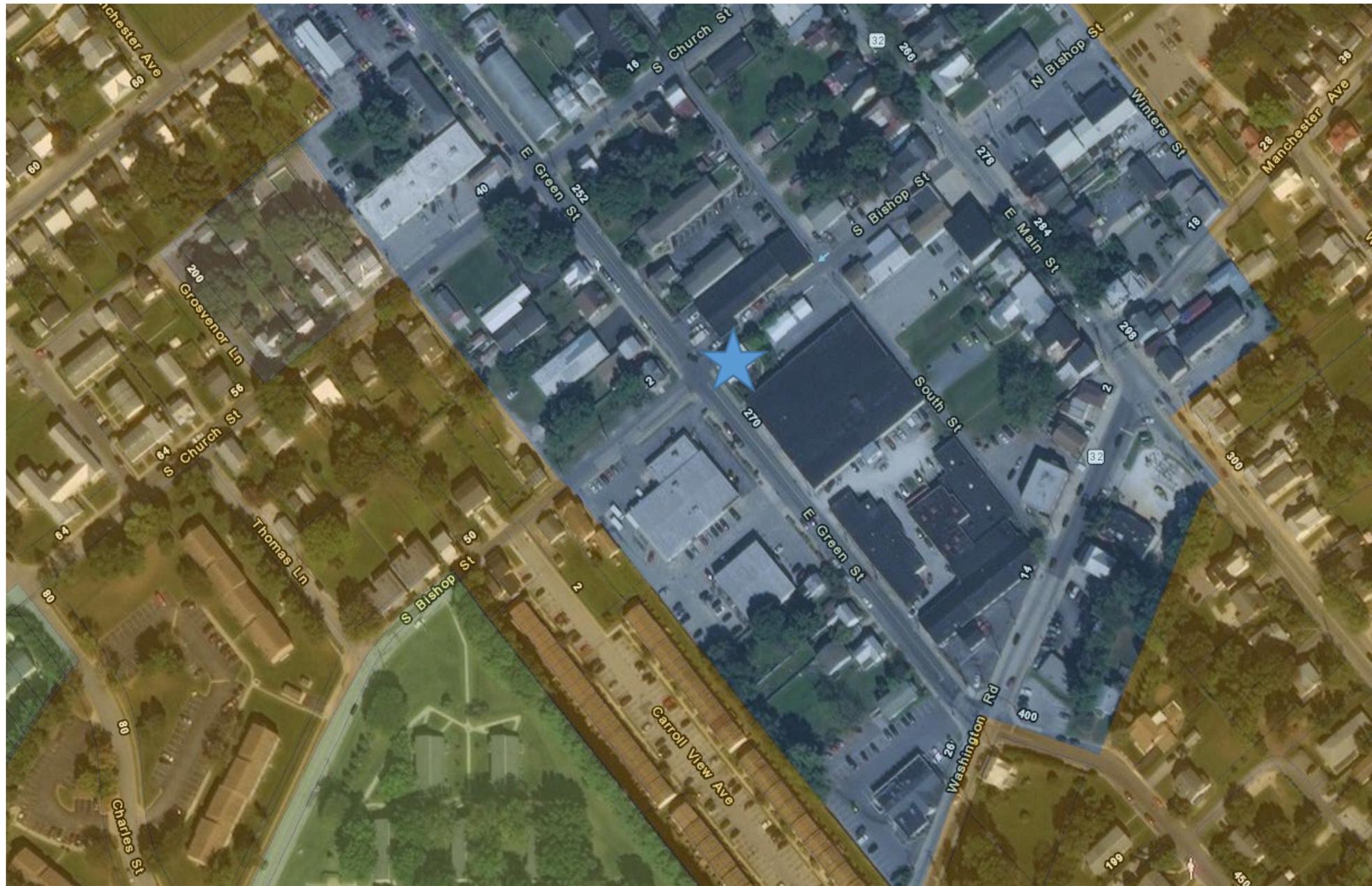
Pursuant to § 164-170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

[City staff recommends that the Board of Zoning Appeals carefully consider approval of the proposed Special Exception.](#)

Attachments

- Sub-exhibit map related to § 164-170 A. (2)(c)
- SDAT Real Property Search Information
- Article XVI, Off-Street Parking and Loading (§ 164-111)
- Images of 269 East Green Street
- Parking diagram from § 164-115 D.
- BP-18-1792
- References to Ordinances list
- Chapter 171: Livability Code

City of Westminster Zoning



Legend



Site



D-B: Downtown Business



R-7,500 Residential



PD-9



R-10,000 Residential

Real Property Data Search (w2)

Search Result for CARROLL COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration				
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Account Identifier:		District - 07 Account Number - 056370							
Owner Information									
Owner Name:		LMJB PROPERTIES LLC			Use:		COMMERCIAL/RESIDENTIAL		
Mailing Address:		271 E GREEN ST WESTMINSTER MD 21157-5417			Principal Residence:		NO		
					Deed Reference:		/09031/ 00017		
Location & Structure Information									
Premises Address:		269 E GREEN ST WESTMINSTER 21157-0000			Legal Description:		LT - 11880 SF 269 E GREEN ST WESTMINSTER		
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0019	0678		0000				2018	Plat Ref:
Special Tax Areas:				Town:		WESTMINSTER			
				Ad Valorem:					
				Tax Class:					
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area		County Use	
1925		1904				11,880 SF			
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation			
2	YES	STANDARD UNIT	SIDING	2 full	1 Detached				
Value Information									
		Base Value	Value	Phase-in Assessments					
			As of	As of		As of			
			01/01/2018	07/01/2018		07/01/2019			
Land:		135,000	135,000						
Improvements		130,500	185,600						
Total:		265,500	320,600	283,867		302,233			
Preferential Land:		0				0			
Transfer Information									
Seller: INTROL COMPANY INC			Date: 06/05/2018			Price: \$231,180			
Type: NON-ARMS LENGTH OTHER			Deed1: /09031/ 00017			Deed2:			
Seller: ECKARD WILLIAM J			Date: 03/14/1988			Price: \$150,000			
Type: ARMS LENGTH IMPROVED			Deed1: /01072/ 00336			Deed2:			
Seller: COOK MARY E L/E ETAL			Date: 05/28/1987			Price: \$0			
Type: NON-ARMS LENGTH OTHER			Deed1: /01020/ 00290			Deed2:			
Exemption Information									
Partial Exempt Assessments:		Class		07/01/2018		07/01/2019			
County:		000		0.00					
State:		000		0.00					
Municipal:		000		0.00 0.00		0.00 0.00			
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Homestead Application Information									
Homestead Application Status: No Application									
Homeowners' Tax Credit Application Information									
Homeowners' Tax Credit Application Status: No Application									
Date:									

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

Parking Standards

Type of Use

(number of spaces)

Multiple-family units

1 per efficiency unit; 1 1/2 per 1-bedroom unit; 2 for 2- or more-than-2-bedroom units

Multiple-family housing for older persons

1 1/2 per dwelling unit up to 2 bedrooms, 2 per dwelling unit with more than 2 bedrooms

Nonresidential

Airparks, airports and fields requirements. Land uses incidental to air flights are subject to other parking standards contained in this chapter.

Subject to state and federal site

Animal hospitals, veterinary clinics and kennels

1 per employee, plus 1 per business vehicle, plus 1 for each 300 square feet of floor space used for hospital, clinic, office, storage or other purposes

Automobile service stations

2 per bay and 1 per employee shift

Barbershops and beauty shops

1 per employee, plus 2 per each chair

Bowling centers

4 per lane and 1 per employee

Churches, parish houses or other places of worship

1 for each 3 fixed seats, provided that the number of spaces required may be reduced by up to 50% if the place of worship is within 500 feet of any public parking lot or commercial parking lot where sufficient spaces are available, by permission of the owner(s) without charge, during the time of services to make up the additional spaces required

269 East Green Street

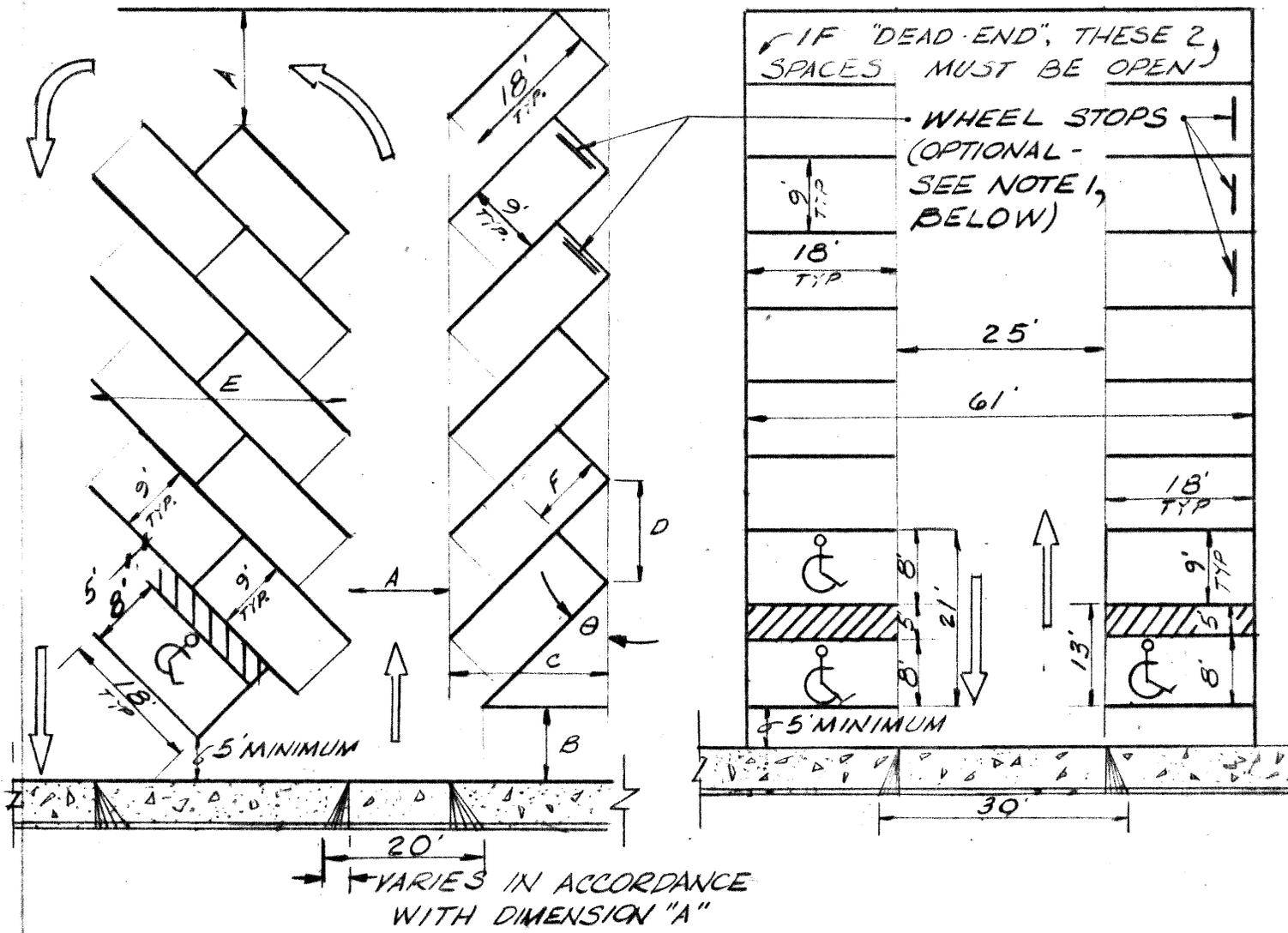
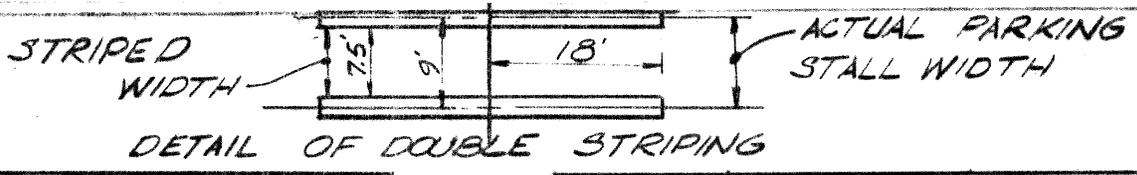


Bishop Street

East Green Street

269 East Green Street (Rear)





NOTES:

- 1) USE OF VEHICLE LOCATION DEVICES SHALL NOT DECREASE THE SPACE OR DEPTH DIMENSION.
- 2) FOR SPECIFIC HANDICAPPED ACCESS REQUIREMENTS, SEE ART. 41, SECT. 257 JK OF THE ANNOTATED CODE OF MARYLAND.

θ°	A	B	C	D	E	F	"N" - NO. OF SPACES*	
15	(NOT PRACTICAL, DUE TO EXCESSIVE REQUIRED LENGTH)							
30	12'	9'	16.8	18.0	25.8	15.6	$N = \frac{L-9}{15.6}$	
45	12'	9'	19.1	12.7	31.8	9.0	$N = \frac{L-9}{12.7}$	
60	17'	12'	20.1	10.4	35.7	5.2	$N = \frac{L-12}{10.4}$	
90	(SEE 2-WAY TRAFFIC DETAIL, ABOVE)							$N = \frac{L-5}{9}$ (-1, IF DEAD-EN

* L = LENGTH AVAILABLE BEHIND WALK

Bureau of Permits and Inspections Carroll County Building Permit Application

225 N. Center Street Room 118, Westminster, MD 21157
 410-386-2674 * 1-888-302-8945 * MD Relay Service 7-1-1/800-735-2258

Permit No. **18-1792**

Please fill in bold boxes * (Please Print)

Location Information	*Street Address of Job 269 EAST GREEN ST					St. Rd	Cty. Rd.	Private	Lot Size	
	Subdivision		Lot No.	Sec. No.	Plat No.	Tax Map 107	Block 19	Parcel 678	Fire District 03	
	Election Dist 7-1	Account Number 056370		School Codes		Liber/Folio 9031/0017	Census Tract 5078.01.200	MCDA 07		
Owner/Contractor Information	*Property Owner(s) as Recorded in Land Records LMB PROPERTY LLC					Phone # 410 259-4894	Email Address:			
	*Property Owner(s) Address 271 EAST GREEN ST					City WESTMINSTER	State MD	Zip 21157		
	*Contractor's/Tenant Name (if Applicable) JE RICHARDS CONT CO INC					Phone # 443-375 0277	Email Address:		License No. 129389	
Job Description Information	*Address 266 EAST GREEN ST					City WESTMINSTER	State MD	Zip 21157		
	*Description of Work NEW KITCHEN AND LAUNDRY ON 2nd Floor APARTMENT CLOSET AND PARTITION WALL AND 2 DOORWAY 1ST FLOOR								*Exterior Finish Block	
	*Est. Cost 15,000		Foundation Size		Slab on Grade	1 st Floor	2 nd Floor 40x40	Garage/Carport	Out Building	
Unf. Base/Crawl		Finished Basement		Breezeway	Deck	Front Porch	Side/Back Porch			
# Bedrooms	# Full Bath	# Half Bath	Plumb/Gas YES	Electric YES	Type Heat	Chimney	Fireplace	Woodstoves	Energy Code	
Public	<input checked="" type="checkbox"/> Sewer Water	Private	<input type="checkbox"/> Septic Well	Plans 2	Receipt No. 3163992	Permit Fee \$242.00	Impact Fee			

Caution: I/we have carefully examined and read this application and know the same is true and correct. I/we are also aware that whoever is indicated as the "Contractor" assumes full responsibility for this application and for the construction and will comply with all provisions of the Carroll County Regulations and State Laws whether herein specified or not. I/we further understand that the Contractor, Plumber and Electrician are the only persons authorized to request inspections and the plumbers and electricians must file for their own applications. To start construction before a building permit is issued and to use and occupy the premises before a U&O Certificate is obtained is in violation of the law.

<input checked="" type="checkbox"/> James E Richards	JAMES RICHARDS	<input checked="" type="checkbox"/> 443-375 0277	<input checked="" type="checkbox"/> 9-8-18
*Applicant's Signature & Print Name		*Applicant's Phone #	*Date
Email Address:			

New Bldg	Addition	Alteration	1-Family	2-Family	Multi-Fam	# Units	Other	Agency	Approvals Name	Date
Zoning District								Zoning		
Zoning Ord Section Ref.				BZA/YA		Site Plan #		Plan		
Proposed Front Yard Min. by Ord.			Proposed Rear Yard Min. by Ord.			Fire Engi				
Proposed Right Side Min. by Ord.			Proposed Left Side Min. by Ord.			Heat Dep.				
Special Conditions/Comments Convert single family to 2 units James Richards								Stat Roa	DO NOT ISSUE <hr/> HOLD	
								City		
								Gra		
								Flo		
								For Cot		
								Dev Met		
								Util		

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
53	6-1-1985	<u>51.40—51.42</u>
57	2-18-1986	<u>52.001—52.003, 52.015—52.032, 52.045, 52.046, 52.060—52.066, 52.080—52.090, 52.999</u>
26C	7-29-1986	<u>90.01—90.03, 90.05, 90.07, 90.14, 90.99</u>
60	9-16-1986	<u>110.01</u>
70	9-29-1988	<u>171.001—171.008, 171.020—171.022, 171.035—171.037, 171.050—171.055, 171.070—171.074, 171.085—171.088, 171.100—171.105, 171.120—171.123, 171.135, 171.136, 171.150—171.153, 171.165, 171.180—171.183, 171.195—171.204, 171.215, 171.999</u>
71	11-10-1988	<u>94.001—94.003, 94.015—94.017, 94.030—94.036, 94.050—94.052, 94.054—94.057, 94.070, 94.072—94.084, 94.095—94.097, 94.110—94.113, 94.999</u>
26D	8-28-1990	<u>90.01—90.03</u>
26E	11-12-1990	<u>90.00, 90.00</u>

CHAPTER 171: LIVABILITY CODE

Section

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GENERAL PROVISIONS

§ 171.001 TITLE.

This chapter shall be known as the "Carroll County Livability Code". The short title shall be the "Livability Code".
(2004 Code, § 141-1) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.002 SCOPE.

The Livability Code is created to protect the public health, safety, and welfare on all premises by:

- (A) Establishing minimum requirements for basic equipment and facilities used for light, ventilation, heating, and sanitation for the premises and for the safe and sanitary maintenance of those premises and the equipment thereon;
- (B) Establishing minimum requirements for providing means of egress, fire protection systems, and other equipment and devices necessary for safety in the event of fire on the premises;
- (C) Fixing the responsibilities of property owners and tenants; and
- (D) Providing for administration, inspection, enforcement, and penalties.

(2004 Code, § 141-2) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.003 INTENT.

The Livability Code shall be construed to protect the public health, safety, and welfare insofar as they are affected by the continued use, occupancy, and maintenance of premises and the equipment thereon.

(2004 Code, § 141-3) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.004 APPLICABILITY; EXCEPTIONS.

The Livability Code shall apply to all premises, and the equipment thereon, which are located in the county, other than those as listed below:

- (A) Owner-occupied dwelling units;
- (B) Premises and the equipment thereon, located within any municipality located in the county that has adopted a local housing code containing provisions that substantially conform to the provisions of this chapter;
- (C) Any premises exempted by the county or Housing Board of Review pursuant to this chapter;
- (D) Nothing in this chapter shall be interpreted to apply to non-habitable buildings or structures which do not pose a hazard to health or constitute a nuisance in the judgment of the Health Officer or do not pose a hazard to the safety and welfare of any member of the public, including the property owner, occupant, or tenant, in the judgment of the county; and
- (E) Units in which there is an active court case unless otherwise required to be inspected by a court order.

(2004 Code, § 141-4) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.005 TENANT PROTECTION AGAINST RETALIATORY EVICTIONS.

Any tenant who files a complaint under this chapter shall be entitled to the protection against retaliatory evictions contained in Md. Code, Real Property Article, §§ 8-208.1 or 8-208.2 (lead paint retaliatory evictions).

(2004 Code, § 141-5) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.006 COMPLIANCE WITH CONSTRUCTION CODES.

All repairs, maintenance, alterations, installations, or changes of use to any premises or the equipment thereon, which may be caused directly or indirectly by the enforcement of the Livability Code, shall be done in accordance with the Construction Codes (see Chapter 170).

(2004 Code, § 141-6) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.007 RULES OF INTERPRETATION.

- (A) **Scope.** Unless otherwise expressly stated, the terms defined in § 171.008 shall have the meanings indicated for purposes of this chapter.
- (B) **Interchangeability.** Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; "shall" is always mandatory; "may" is optional.
- (C) **Terms not defined.** Where terms are not defined, through the methods authorized by this section, they shall have their ordinarily accepted meanings as the context shall imply.

(2004 Code, § 141-7) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.008 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. Md. Code, Art. 83B, § 6-103.

APPROVED or the phrase *WHICH HAVE RECEIVED ALL NECESSARY AND LEGALLY REQUIRED APPROVALS.* When used with "building", "facility", or "equipment", any building, facility, or equipment required by this chapter that was constructed or installed in accordance with the standards that applied at the time of construction or installation.

BASEMENT. The portion of a dwelling which is partly or completely below grade and having at least 50% of its floor to ceiling height below finished grade.

BUILDING. That which is built or constructed, including without limitation because of enumeration, buildings, or portions thereof, or any use, or occupancy whatsoever, and any structure thereon.

CENTRAL HEATING. The heating system permanently installed and adjusted so as to provide the distribution of heat to all habitable areas.

COMMON AREA. Any area which the property owner controls, maintains, uses, or has charge of, and is used by a combination of tenants or the property owner in combination with the tenant, including common egress areas such as but not limited to stairways, hallways, fire escapes, and similar areas.

CONDEMN. To declare a premises, or equipment thereon, unsafe or unfit for human use or occupancy.

CONTAMINATION. The introduction into water of any substance, which may transfer infectious agents or other foreign substances (organic, inorganic, radiological, or biological), in concentrations which may constitute a health hazard or impair the usefulness of the water.

COUNTY. The Department of Citizen Services, or any agency subsequently designated by the County Commissioners of Carroll County to enforce and administer the Livability Code.

DETERIORATION. A decline in the condition of the premises, building thereon, or equipment thereon such that the condition falls below the standards established by this chapter or any other applicable statutes, codes, and ordinances.

DWELLING. A building containing one or more dwelling units, and shall include but not be limited to a single-family, two-family, multi-family dwelling and rooming house.

DWELLING UNIT. A single housekeeping unit used, intended to be used, rented, leased, let, or hired out to be occupied for human use and occupancy and providing or intended to provide complete facilities for living, sleeping, cooking, or eating purposes for one or more occupants.

EXTERMINATION. The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping, or by any other pest elimination methods which have received all necessary and legally required approvals.

GARBAGE. All animal and vegetable waste including that resulting from the handling, preparation, cooking, and consumption of food.

HABITABLE AREA. The space in a building used for living, sleeping, eating, cooking, including bathrooms and toilet compartments. Closets, halls, storage, or utility space and similar areas are not **HABITABLE AREAS**.

HOUSING BOARD OF REVIEW. A Board appointed by the County Commissioners pursuant to §§ 171.180 through 171.183.

INFESTATION. The presence of insects, rodents, vermin, or other pests within or contiguous to a premises.

LEAD-BASED PAINT. Shall have the same meaning prescribed in Md. Code, Environment Article, § 6-801 and COMAR 26.16.02.02.

LEAD-BASED PAINT VIOLATION. Enforcement of this provision shall be by applicable state agencies.

MAINTENANCE. The repair and other acts intended to prevent deterioration of premises, building, or the equipment thereon.

MECHANICAL VENTILATION. Ventilation by power-driven devices.

NATURAL VENTILATION. Ventilation by opening to outer air; air through windows, skylights, doors, louvers, or stacks without power-driven devices.

OCCUPANT. Any person occupying a premises owned by another.

OWNER-OCCUPIED. A dwelling unit, occupied by the owner of the property in fee.

PERSON. Any individual, agent, partnership, limited partnership, trust, estate, association, corporation, or employee thereof.

PLUMBING. The materials, facilities, and fixtures used in the installation, maintenance, extension, or alteration of all piping, fixtures, appliances, and appurtenances within the scope of the Building Code. In appropriate context, this term may mean the work involved in installing, maintaining, extending, or altering **PLUMBING**.

PLUMBING FIXTURE. A receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises and demands a supply of water therefrom; or discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises; or which requires both a water supply connection and a discharge system.

PREMISES. A lot or parcel of land, including the buildings thereon.

PROPERTY OWNER. Any person having legal title in the premises as recorded among the Land Records of Carroll County including the guardian of the estate of any such person or the executor or administrator of the estate of such person if ordered to take possession of the premises by a court, but shall not include a mortgagee or the trustees of a deed of trust if the same is used to secure a loan.

ROOMING HOUSE. A building containing one or more rooming units which is used or designed to be used, for compensation, as an abiding place for individuals who are not related to the owner or lessee of the same.

ROOMING UNIT. A single unit within a dwelling and for which the property owner or another receives compensation, which is intended to be used for living and sleeping, but not for cooking and eating.

RUBBISH. Refuse composed of paper, rags, cartons or boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, dust and/or other similar materials, as well as the residue from the burning of wood, coal, coke, and other combustible materials.

STAGNANT WATER. Any accumulation of water that has not dispersed within seven days of the last recorded local rainfall.

STRUCTURALLY SOUND. Free of deterioration and maintained capable of safely bearing the dead and live loads imposed upon them in accordance with the Construction Codes.

STRUCTURE. Fences, signs, billboards, fire escapes, chute escapes, railings, water tanks, towers, open grade steps, sidewalks, or stairways, tents or anything erected and framed of component parts which is fastened, anchored, or rests on permanent foundation or on the ground.

TENANT. Any person who has use of a dwelling unit or rooming unit, except a property owner.

UNFIT BUILDING. A building or part thereof which is unfit for human use or occupancy, whenever the Code Official finds that a hazard or other condition exists that is a threat to public life, health, property, or the safety and welfare of the occupants of the premises.

UNFIT PREMISES. A lot or parcel of land or part thereof, which is unfit for human use or occupancy, whenever the Code Official finds that a hazard or other condition exists that is a threat to public life, health, property, or the safety and welfare of the occupants of the premises.

UNSAFE BUILDING. A building or part thereof found by the county to be a hazard to public life, health, property, or the safety of the occupant of the premises because it does not provide minimum protection from fire or because it is so damaged, decayed, dilapidated, structurally unsound, or of such faulty construction or unstable foundation that it is likely to partially or completely collapse.

UNSAFE EQUIPMENT. Any boiler, heating equipment, cooking equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment on the premises which is in such disrepair or condition that it is found by the county to be a hazard to public life, health, property, the safety, and welfare of the occupant of the premises. **UNSAFE EQUIPMENT** may contribute to the finding that the building is unsafe or unfit for human use or occupancy.

USE. In addition to its ordinary meaning, includes the right to **USE**, whether actually used or not.

VENTILATION. The process of supplying and removing air by natural or mechanical means to or from any space.

WEATHER-TIGHT. Free of holes, breaks, decayed or loose boards, and any other conditions which might admit precipitation or other water seepage to the interior portions.

(2004 Code, § 141-8) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

RESPONSIBILITIES OF OWNERS AND TENANTS

§ 171.020 GENERAL PROVISIONS.

(A) **Scope.** The provisions of this subchapter shall govern the responsibilities of the property owner and tenant for the use and maintenance of premises and equipment thereon.

(B) **Intent.** A property owner shall not rent or lease for use and occupancy any premises unless the premises and equipment thereon comply with the provisions of this chapter. A tenant may not sublease for use and occupancy any premises unless the premises and equipment thereon comply with the provisions of this chapter.

(C) **Application.** The property owner and tenant shall be responsible for compliance with the provisions of this chapter and may be cited for violations thereof.

(D) **Discontinuance of service or utility.** No property owner or tenant shall cause any service, facility, equipment, or utility which is required to be supplied under this chapter to be removed from or shut off from or discontinued for any occupied dwelling let by the property owner, except for such temporary interruption as may be necessary while actual repair or alterations are in process, or during temporary emergencies when discontinuance is approved by the county.

(2004 Code, § 141-9) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.021 RESPONSIBILITIES OF PROPERTY OWNER.

(A) **Hazardous conditions.** The property owner shall provide and maintain the premises free from substances or conditions determined by the county to be a hazard to the occupants of said premises.

(B) **Sanitary conditions.** The property owner shall be responsible for keeping the common areas of a premises maintained in a clean, safe, and sanitary condition.

(C) **Disposal and storage of rubbish and garbage.** The property owner shall prevent the accumulation of and be responsible for the storage and disposal of rubbish and garbage from the common areas of the premises in a clean, safe, and sanitary manner.

(D) **Refuse containers.** The property owner of a single premises having dwelling units and the property owner of a rooming house shall furnish and maintain refuse containers for the storage of rubbish and garbage and shall provide for the disposal of rubbish and garbage. All refuse containers shall be in a location accessible to the dwelling units and rooming units.

(E) **Supplied fixtures and equipment.** The property owner shall be responsible for maintaining equipment and fixtures which are supplied by the property owner to dwelling units or rooming units in good and proper operating condition.

(F) **Extermination.**

(1) **Before occupancy.** If necessary (due to infestation), the property owner shall be responsible for the prompt extermination of any insects, rodents, or other pests on the premises prior to renting or leasing a dwelling unit or rooming unit.

(2) **When necessary.** The property owner of a premises shall be responsible for the extermination of any insects, rodents, or other pests for that part of the premises which the property owner controls or uses except where the infestation is caused by the failure of a tenant to take responsible action to prevent such infestation of the premises.

(G) **Drainage.** The property owner of a premises shall be responsible for the grading and drainage of the premises as set forth in § 171.035(E).

(H) **Weather-tight.** The property owner shall be responsible for providing and maintaining the dwelling weather-tight.

(I) **Fire safety.** The property owner shall be responsible for installing and maintaining in good working order any smoke detector installed pursuant to this chapter which shall be in accordance with the state fire laws, Md. Code, Art. 38A, § 12A, Smoke Detection Systems.

(J) **Light and ventilation.** The property owner shall provide and maintain light and ventilation as required by this chapter.

(K) **Mechanical and electrical facilities.** The property owner shall provide and maintain mechanical and electrical facilities and equipment as required by this chapter.

(L) **Space requirements.** The property owner shall provide space for habitation as required by this chapter.

(M) **Tenant acting as property owner.** For purposes of this section, a tenant who leases a dwelling to another shall be considered a property owner and required to act as required by this chapter.

(2004 Code, § 141-10) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.022 RESPONSIBILITIES OF TENANT.

(A) **Hazardous conditions.** The tenant shall maintain the premises free from hazards due to the presence of substances or conditions determined by the county to be a hazard to the occupants of said premises.

(B) **Sanitary conditions.** The tenant shall be responsible for keeping that part of the premises which the tenant occupies, controls, or uses, including common areas, maintained in a clean, safe, and sanitary condition.

(C) **Disposal and storage of rubbish and garbage.** The tenant shall prevent the accumulation of rubbish and garbage, and shall be responsible for the storage and disposal of rubbish and garbage, in a clean, safe, and sanitary manner for that part of the premises which is occupied, controlled, or used by the tenant.

(D) **Refuse containers.** The tenant of a dwelling unit shall furnish and maintain refuse containers for the storage of, and provide for the disposal of rubbish and garbage that result from the occupancy of the dwelling unit.

(E) **Supplied fixtures and equipment.** The tenant shall be responsible for keeping owner-supplied equipment and fixtures clean and sanitary, and for the exercise of reasonable care in their proper use and operation.

(F) **Furnished by tenant.** The tenant shall be responsible for the maintenance of equipment and fixtures furnished by the tenant. Such equipment and fixtures shall be properly installed and shall be maintained in good working condition, kept clean and sanitary, and free of defect, leaks, or obstructions.

(G) **Extermination.** The tenant shall be responsible for the extermination of any insects, rodents, or other pests for that part of the premises where said infestation is caused by the failure of the tenant to take reasonable action to prevent infestation of the premises.

(H) **Access by property owner.** At reasonable times and upon reasonable notice, a tenant shall give the property owner, his or her agent or employee access to the dwelling unit or rooming unit for the purpose of inspections, maintenance, repairs, or alterations as are necessary to comply with the provisions of this chapter. In the event of an emergency, the owner has the right of immediate entry.

(I) **Required heat.** Where the heating facilities of any dwelling are under the control of the tenant thereof, it shall be the responsibility of the tenant to operate the heating facilities in order to maintain above-freezing temperatures at all times in all portions of the dwelling so as to prevent injury, or damage to water pipes and plumbing.

(2004 Code, § 141-11) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

ENVIRONMENTAL REQUIREMENTS

§ 171.035 GENERAL CONDITION OF PREMISES.

(A) **Sanitation.** All premises shall be maintained in a clean, safe, and sanitary condition and free from any accumulation of rubbish or garbage.

(B) **Refuse containers.** All refuse containers shall be rodent-proof, insect-proof, weather-tight, and kept structurally sound as to withstand handling stress, and shall be equipped with tight-fitting covers or similar closures.

(C) **Insect and rodent control.** All premises shall be free from infestation of insects, rodents, vermin, or other pests.

(D) **Repeated incidents.** Continuing or repeated incidents of infestation, as determined by the county, shall require the installation of rodent- and vermin-proof walls. The rodent- and vermin-proof walls shall be installed in accordance with the International Building Code, Appendix F.

(E) **Grading and drainage.** All premises shall be graded and maintained to provide for the safe and efficient drainage of roofs (except where design standards require) and paved areas, yards, and courts, and other open areas on the premises and prevent the accumulation of stagnant water. All water shall be drained so as not to cause dampness in the walls, or to allow water seepage into the interior of a building.

(F) **Structural members.** All supporting structural members of a building shall be structurally sound.

(G) **Lead-based paint.** All premises shall be maintained in compliance with Md. Code, Environment Article, Subtitle 8, and COMAR 26.16.02 (Reduction of Lead Risk in Housing). Enforcement of this provision shall be by applicable state agencies.

(2004 Code, § 141-12) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.036 EXTERIOR OF BUILDING.

(A) **Exterior surfaces.** Every foundation, exterior wall, roof, and all other exterior surfaces shall be kept in good repair and in a condition to exclude rodents and other pests.

(B) **Foundation walls.** All foundation walls shall be structurally sound.

(C) **Exterior walls.** Every exterior wall shall be weather-tight. All exterior surface materials, including wood, composition, or metal siding, shall be properly surface-coated to prevent structural deterioration.

(D) **Roofs and roof drainage.** The roof shall be structurally sound and weather-tight. Roof drainage shall be adequate to prevent precipitation from causing dampness, collapse or structural deterioration in the walls or interior portion of the building.

(E) **Decorative features.** All cornices, entablatures, belt courses, corbels, terra-cotta trim, wall facings and similar decorative features shall be kept in good repair, structurally sound and properly anchored, or removed.

(F) **Overhang extensions.** All canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts, and similar overhang extensions shall be maintained in good repair, be structurally sound, and properly anchored. All exposed surfaces of metal or wood shall be protected from the elements and against structural deterioration by the periodic application of weather-coating material such as paint or other protective treatment.

(G) **Chimneys and towers.** All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be kept in good repair, structurally sound and properly flashed and caulked. All exposed surfaces of metal or wood shall be protected from the elements and against structural deterioration by the periodic application of weather-coating materials such as paint or other protective treatment.

(H) **Stairs and porches.** Every exterior stair, porch, fire escape, balcony, and all appurtenances attached thereto shall be kept in good repair, be structurally sound and maintained in a clean, safe, and sanitary condition.

(I) **Handrails and guardrails.** Handrails and guardrails shall be kept in good repair in accordance with the accepted engineering practices at the time the building was constructed. New or replaced handrails and guardrails shall be constructed and maintained in accordance with the Construction Codes.

(J) **Windows, doors, and frames.**

(1) **General.**

(a) Every window, door, and frame shall be maintained so as to exclude precipitation and rodents.

(b) Every window and exterior door shall be fitted reasonably in its frame and be weather-tight.

(2) **Operable windows.** Every window, other than a fixed window, shall be easily opened from the inside and shall be capable of being held in position.

(3) **Window locks.** All operable windows shall be provided with a locking device capable of preventing entry into the window from the exterior of the building when in the locked position.

(4) **Insect screens.**

(a) **Screens.** During the period from April 1 to December 1, every door and window or other outside opening used for ventilation purposes shall be supplied with tight-fitting insect screens.

(b) **Alternatives.** The county may approve alternatives to screens for exterior doors or other types of openings which make screening impractical.

(5) **Door hardware.** Every exterior door and its hardware shall be maintained in good condition. Door locks on all interior and exterior doors entering dwelling units shall be in good repair and capable of tightly securing the door.

(2004 Code, § 141-13) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.037 INTERIOR OF BUILDING.

(A) **Interior surfaces.** Floors, walls, windows, doors, ceilings, and other interior surfaces shall be maintained in good repair and in a clean, safe, and sanitary condition.

(B) **Bathroom and kitchen floors.** Every toilet, bathroom, and kitchen floor surface shall be substantially impervious to water and capable of being maintained in a clean, safe, and sanitary condition.

(C) **Exit doors.** Every door available as an exit shall be maintained capable of being opened easily from the inside and providing unimpeded egress.

(D) **Exit facilities.** All stairs, railings, and other exit facilities of a building shall be structurally sound, kept in good repair and capable of being used in a safe manner.

(E) **Space requirements.**

(1) **Bedroom.** Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor area for each occupant thereof.

(2) **Kitchen.** Every kitchen shall contain at least 50 square feet of floor area.

(3) **Living room.** Every dwelling unit having three or more occupants shall provide a living room containing at least 120 square feet of floor area.

(4) **Dining room.** Every dwelling unit having three or more occupants shall provide a dining room containing at least 80 square feet of floor area.

(5) **Combined spaces.** Combined living room, dining room, and bedroom spaces shall comply with the requirements of divisions (E)(1), (E)(3), and (E)(4) above if the total area is equal to that required for separate rooms and if the space is so located that it functions as a combination living/dining/bedroom.

(F) **Prohibited uses.** Kitchens, bathrooms, and combined nonhabitable public and common areas shall not be used for sleeping purposes.

(2004 Code, § 141-14) (Ord. 70, passed 9-29-1988)

LIGHT, VENTILATION, AND UTILITY REQUIREMENTS

§ 171.050 LIGHTING REQUIREMENTS.

(A) **General.** All spaces shall be provided with natural or artificial light as to permit the maintenance of sanitary conditions, and the safe use of the space, appliances, equipment, and fixtures.

(B) **Common halls and stairways.** Every common hall and stairway, including exterior stairways, of a premises shall be provided with natural or artificial light with an average illumination equivalent to not less than three foot-candles over the area at a height of 30 inches above the floor level and one foot-candle at landings and treads.

(C) **Habitable areas.** All habitable areas in a building shall be provided with natural or artificial light with an average illumination equivalent to not less than six foot-candles over the area of the room at a height of 30 inches above the floor level.

(D) **Nonhabitable areas.** Every hall, laundry room, furnace room, interior stairwell in a building, except as set forth in division (B) above, shall be provided with natural or artificial light with an average illumination equivalent to not less than three foot-candles over the area at a height of 30 inches above the floor level.

(2004 Code, § 141-15) (Ord. 70, passed 9-29-1988)

§ 171.051 VENTILATION.

(A) **General.** All areas in a building and equipment thereon required by the Construction Codes to be ventilated shall be provided sufficient natural or mechanical ventilation as set forth in the Construction Codes.

(B) **Mechanical ventilation.** Where mechanical ventilation is provided in lieu of natural ventilation, such mechanical ventilation system shall be maintained and kept in an operable condition during the occupancy of any portion of the building.

(2004 Code, § 141-16) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.052 REQUIRED PLUMBING FACILITIES.

(A) **General.** Every dwelling unit and rooming house shall be provided with plumbing facilities which can be used in privacy, and which are adequate for personal cleanliness and the disposal of human waste.

(B) Dwelling unit.

(1) **Water closet.** Every dwelling unit shall contain a room separate from other habitable areas which provides a water closet supplied with cold running water and which affords privacy.

(2) **Lavatory.** A lavatory shall be placed in the same room as the water closet or in an adjacent room in close proximity which contains a door leading directly into the room in which the water closet is located. The lavatory shall be supplied with hot and cold running water.

(3) **Bathtub or shower.** Every dwelling unit shall contain a room which is equipped with a bathtub or shower supplied with hot and cold running water and which affords privacy.

(4) **Kitchen sink.** Every dwelling unit shall contain a kitchen sink apart from the lavatory required under division (B)(2) above, and the kitchen sink shall be supplied with hot and cold running water.

(C) **Rooming house.** Every rooming house shall provide at least one water closet lavatory basin and bathtub or shower as required in divisions (B)(1), (B)(2), and (B)(3) above for each four rooming units.

(2004 Code, § 141-17) (Ord. 70, passed 9-29-1988)

§ 171.053 PLUMBING FIXTURES AND CONNECTIONS.

(A) General.

(1) All plumbing fixtures and connections thereto shall be maintained in a clean, safe, and sanitary operating condition so as not to allow the breeding of insects and rodents, or allow production of dangerous or offensive gases or odors.

(2) All plumbing fixtures shall be of nonabsorbent material.

(B) **Connections.** Water supply lines, plumbing fixtures, vents, and drains shall be properly installed, connected, and maintained in working order and shall be kept free from obstructions, leaks, and defects and shall be capable of performing the function for which they are designed.

(C) **Access for cleaning.** Plumbing fixtures shall be installed to permit easy access for cleaning both the fixture and the area around it.

(2004 Code, § 141-18) (Ord. 70, passed 9-29-1988)

§ 171.054 WATER SYSTEM.

(A) **General.** Every sink, lavatory, bathtub or shower, drinking fountain, water closet, or other plumbing facility shall be properly connected to either a public water system or an approved private water system.

(B) **Water supply.** At all times the water supply system shall be installed and maintained to provide a supply of water to plumbing facilities, fixtures, devices, and appurtenances in sufficient volume and at pressures adequate to enable them to function properly. The installation and maintenance of the water supply system shall be in accordance with the Construction Codes.

(C) **Contamination.** The water supply shall be maintained free from contamination.

(2004 Code, § 141-19) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.055 SEWAGE SYSTEM.

(A) **General.** Every sink, lavatory, bathtub or shower, drinking fountain, water closet, or other plumbing facility shall be properly connected to either a public sewer system or an approved private sewage disposal system.

(B) **Sewage disposal.** Every plumbing stack, waste, and sewer line shall be installed and maintained so as to function properly and shall be kept free from obstruction, leaks, and defects so as to prevent health hazards or deterioration of the premises.

(2004 Code, § 141-20) (Ord. 70, passed 9-29-1988)

HEATING AND COOKING FACILITIES**§ 171.070 GENERAL PROVISIONS.**

(A) **Installation.** All mechanical equipment used for heating and cooking shall be in accordance with the Construction Codes and as limited by this chapter.

(B) **Maintenance.** All mechanical equipment used for cooking and heating equipment shall be maintained in good working condition, and shall be capable of performing the function for which it was designed and intended.

(2004 Code, § 141-21) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.071 WATER HEATING FACILITIES.

(A) Water heating facilities shall be installed in an approved manner and be equipped with emergency relief valves in accordance with the Construction Codes.

(B) Water heating facilities shall be properly connected with hot water lines to the fixtures required to be supplied with hot water and shall be capable of heating water to a temperature to permit an adequate amount of water to be drawn at every kitchen sink, lavatory, basin, bathtub, shower, and laundry facility, or other similar facilities, at a temperature of no more than 110°F.

(2004 Code, § 141-22) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.072 HEATING FACILITIES.**(A) Requirements.**

(1) **Requirements.** Every dwelling unit and rooming unit shall be supplied with sufficient heat or heating equipment capable of supplying sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 68°F in all habitable areas during the hours between 6:30 a.m. and 10:30 p.m. and maintain a temperature of not less than 60°F during other hours. The temperature shall be measured at a point three feet above the floor and three feet from exterior walls.

(2) **Exception.** When the exterior temperature falls below 0°F or the wind chill factor falls below 0°F and the heating system is operating at its full capacity, the system must be capable of achieving a minimum room temperature of 60°F at all times.

(B) **Climate control.** When facilities for interior climate control (heating, cooling and humidity) are integrated, such facilities shall be maintained and operated in accordance with the designed capacity.

(2004 Code, § 141-23) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.073 FUEL-BURNING EQUIPMENT.

(A) **General.** All fuel-burning equipment shall be connected to a chimney, flue, or vent in accordance with the Construction Codes and manufacturers' specifications.

(B) **Fireplaces.** Fireplaces, and other construction and devices intended for use similar to a fireplace, shall be structurally sound and connected to chimneys which have received all necessary and legally required approvals.

(C) **Clearances.** All necessary and legally required clearances to combustible materials shall be maintained in accordance with the Construction Codes.

(D) **Safety controls.** All safety controls for fuel-burning equipment shall be maintained in effective operation in accordance with the Construction Codes.

(E) **Combustion air.** A supply of air for complete combustion of the fuel and for ventilation of the space shall be provided to the fuel-burning equipment.

(2004 Code, § 141-24) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.074 UNAUTHORIZED DEVICES.

(A) **General.** Devices purporting to reduce gas consumption by attachment to an appliance, the gas supply line or the vent outlet or vent piping shall not be used unless labeled for such use, and the installation has specifically received all necessary and legally required approvals.

(B) Prohibited use.

(1) Portable cooking equipment employing flame is prohibited within a dwelling unit or rooming house except for approved residential-type food trays or salvers which are heated by a candle or alcohol lamp. Approved portable cooking equipment employing a flame may not be used unless a permanent cooking appliance is available in the dwelling unit.

(2) Cooking is prohibited in any bedroom.

(C) **Space heaters.** A property owner or tenant shall not install, operate, or use in unvented (if required to be vented) or unsafe self-contained heating appliance of either the circulating or radiant type.

(2004 Code, § 141-25) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

ELECTRICAL FACILITIES

§ 171.085 REQUIRED SERVICE.

Every dwelling unit, rooming unit, and all public and common areas shall be supplied with adequate electric service and outlets which shall be connected to a source of electric power in accordance with the Construction Codes.

(2004 Code, § 141-26) (Ord. 70, passed 9-29-1988)

§ 171.086 RECEPTACLES.

(A) **Required number.** Every habitable area shall contain at least two separate receptacle outlets installed in accordance with the Construction Codes.

(B) **Exception.** Every bathroom shall contain at least one receptacle outlet and be a ground-fault circuit-interrupter type.

(C) **Ground-fault circuit-interrupters.** All existing 125-volt receptacles within six feet of the kitchen sink above countertop surfaces shall have ground-fault circuit-interrupter protection.

(2004 Code, § 141-27) (Ord. 70, passed 9-29-1988)

§ 171.087 DEFECTIVE SYSTEM.

Where it is found that the electrical system in a building is unsafe and constitutes a hazard to the occupants, the county shall require the service be corrected or upgraded, in accordance with the Construction Codes to the minimum amperage required to carry the load.

(2004 Code, § 141-28) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018)

§ 171.088 INSTALLATION.

(A) **Compliance with Construction Codes.** All electrical equipment, wiring, and appliances shall be installed and maintained in accordance with the Construction Codes.

(B) **Required approvals.** All electrical equipment shall be of a type which has received all necessary and legally required approvals.

(2004 Code, § 141-29) (Ord. 70, passed 9-29-1988)

FIRE SAFETY FACILITIES

§ 171.100 INTENT.

All buildings shall be constructed and maintained to prevent and avoid fire hazards and be conducive to fire safety.

(2004 Code, § 141-30) (Ord. 70, passed 9-29-1988)

§ 171.101 MEANS OF EGRESS.

(A) **General.** A safe, continuous, and unobstructed means of egress shall be provided from the interior of a building to the exterior at a street, yard, court, or passageway leading to a public open area at grade.

(B) **Direct exit.** Every dwelling unit and rooming unit shall have access directly to the outside or to a common area that leads directly to the outside.

(C) **Fire escapes.** All fire escapes shall be in good working condition and be structurally sound.

(D) **Emergency escape.** Every sleeping room shall have emergency egress in accordance with the Construction Codes.

(E) **Exit doors.** All doors in the means of egress required by division (A) above shall be easily opened from the interior side.

(F) **Exit signs.** If exit signs are required, they shall be illuminated and visible in accordance with the Construction Codes.

(2004 Code, § 141-31) (Ord. 70, passed 9-29-1988)

§ 171.102 ACCUMULATIONS AND STORAGE.

(A) **General.** Garbage or rubbish shall not be allowed to accumulate or be stored overnight in stairways, passageways, doors, windows, fire escapes, or other means of egress.

(B) **Flammable matter.** Highly flammable or explosive matter, such as paints, volatile oils and cleaning fluids, or combustible rubbish such as waste paper, boxes, and rags, shall not be allowed to accumulate or be stored on the premises except in reasonable quantities consistent with normal residential usage.

(2004 Code, § 141-32) (Ord. 70, passed 9-29-1988)

§ 171.103 DWELLING UNITS PROHIBITED IN BUILDINGS WITH FLAMMABLE LIQUIDS.

A dwelling unit or rooming unit shall not be located within a building containing an establishment handling, dispensing, or storing flammable liquids with a flash point of 100°F or lower, except as allowed in the Construction Codes.

(2004 Code, § 141-33) (Ord. 70, passed 9-29-1988)

§ 171.104 FIRE-RESISTANCE RATINGS.

(A) **General.** Floors, walls, ceilings, and other elements and components which are required by the Construction Codes to comply with a fire-resistance rating shall be maintained so that the respective fire-resistance rating of the enclosure, separation, or construction is preserved.

(B) **Fire doors.** All necessary and legally required fire-resistance rated doors or smoke barriers shall be in good working order, including all hardware necessary for the proper operation thereof. Unless approved by the county, door stops, wedges, and other devices used to hold fire doors open shall be prohibited.

(2004 Code, § 141-34) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018) Penalty, see § 171.999

§ 171.105 FIRE PROTECTION SYSTEMS.

(A) **General.** All fire protection systems and equipment shall be in proper operating condition at all times.

(B) **Smoke detectors.** All dwelling units and rooming units shall be provided with a minimum of one single-station smoke detector in the vicinity of each sleeping area. The smoke detectors shall be installed in accordance with the Construction Codes. When activated, the smoke detector shall provide an alarm suitable to warn the occupants within the unit.

(C) **Fire suppression systems.** Fire suppression systems in buildings shall be in good condition and free from mechanical defects. Sprinkler heads shall be kept clean and free of corrosion and paint and shall not be bent or damaged.

(D) **Fire extinguishers.** All portable fire extinguishers in buildings shall be visibly accessible and maintained in an efficient and good working condition and shall be capable of performing the function for which designed and intended.

(2004 Code, § 141-35) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

INSPECTIONS

§ 171.120 SCOPE.

Upon complaint or whenever the county has reasonable grounds to believe that a violation has occurred, the county shall cause the premises and equipment thereon to be inspected.

(2004 Code, § 141-36) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.121 RIGHT OF ENTRY.

(A) **General.** The county is authorized to enter any premises at a reasonable time for the purpose of making inspections and performing duties as authorized under this chapter.

(B) **Obstruction.** If any person refuses, impedes, inhibits, interferes with, restricts, or obstructs the county's entry and free access to any part of the premises when making inspections and performing duties as authorized under this chapter, the county may seek, in a court of competent jurisdiction, an order that the person cease and desist interference.

(C) **Credentials.** The county shall present credentials, upon request, when making inspections and performing duties as authorized under this chapter.

(2004 Code, § 141-37) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.122 COORDINATION OF INSPECTION.

Whenever, in the opinion of the county, it is deemed necessary or desirable to have inspections by any other governmental official or agency, the county shall arrange for the coordination of such inspections so as to minimize the number of visits by inspectors, and they shall be authorized to enter the premises on the same basis as the county.

(2004 Code, § 141-38) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018)

§ 171.123 REINSPECTIONS.

In the event no appeal is taken to the Housing Board of Review pursuant to § 171.182, the county shall reinspect the premises or equipment thereon to determine if the violation has been corrected. If upon reinspection the violation is determined by the county not to have been corrected, the county may take action to correct said violation, pursuant to § 171.199.

(2004 Code, § 141-39) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

ALTERATIONS AND REPAIRS

§ 171.135 AUTHORITY TO REQUIRE REPAIRS.

The county has the authority to require any alterations or repairs necessary to bring a premises or equipment thereon into compliance with this chapter. The county's determination of what may be necessary to bring such premises or equipment thereof into compliance shall take into consideration the use of alternatives as provided for in § 171.136.

(2004 Code, § 141-40) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.136 ALTERNATIVES.

The county shall have the authority to approve alternatives to any alterations or repairs when conditions are encountered which make the originally approved work impractical, provided that such alternatives can be readily determined to be in compliance with this chapter, and are requested in writing by the property owner or tenant prior to such changes. The party requesting the alternative shall specifically describe the alternative and the reasons and justification for the change.

(2004 Code, § 141-41) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

CONDEMNATION

§ 171.150 AUTHORITY.

When a premises or equipment thereon is found by the county to be unsafe or unfit, the county shall condemn and placard such premises or equipment thereon. The county may order the premises or building thereon closed and vacated or order the equipment not to be used. The premises or building thereon shall not be reoccupied or equipment thereon used without prior approval of the county.

(2004 Code, § 141-42) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018)

§ 171.151 TIME FOR TENANT TO VACATE.

Any person ordered to vacate a premises or building pursuant to § 171.150 shall do so within the time given in accordance with applicable laws. Alternative housing shall be provided that person pursuant to § 171.201(B).

(2004 Code, § 141-43) (Ord. 70, passed 9-29-1988)

§ 171.152 REMOVAL OF PLACARD.

No person shall deface or remove a condemnation placard without prior approval of the county.

(2004 Code, § 141-44) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018) Penalty, see § 171.999

§ 171.153 TIME LIMITATION FOR CLOSED BUILDINGS; DEMOLITION.

No building ordered vacated shall remain closed for a period longer than 90 days unless approved by the county. If not repaired so the building is fit for human use and occupancy, the property owner shall cause the building to be demolished.

(2004 Code, § 141-45) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

DEMOLITION

§ 171.165 ORDERING OF DEMOLITION.

The county may order the property owner of a premises, upon which is located any condemned building or not repaired pursuant to § 171.153, to have the building demolished.

(2004 Code, § 141-46) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018)

HOUSING BOARD OF REVIEW

§ 171.180 ESTABLISHMENT.

A Housing Board of Review shall be created to hear and decide appeals of orders, decisions, or determinations made by the county relative to the application and interpretation of this chapter. The Housing Board of Review shall be the County Commissioners or not less than three persons whom the County Commissioners may designate.

(2004 Code, § 141-47) (Ord. 70, passed 9-29-1988; Ord. 03-20, passed 10-16-2003; Ord. 2018-06, passed 6-28-2018)

§ 171.181 PROCEDURE.

The Housing Board of Review shall establish rules and regulations for its own procedure not inconsistent with the provisions of this chapter.

(2004 Code, § 141-49) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.182 APPEALS; NOTICE OF APPEAL.

Whenever it is claimed that the true intent and meaning of this chapter or any of the regulations thereunder have been misconstrued or wrongly interpreted, the property owner or other person affected by the decision may appeal the decision of the county to the Housing Board of Review. Notice of appeal shall be in writing and filed with the county within 30 days.

(2004 Code, § 141-50) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.183 FORMS.

Appeals hereunder shall be on forms provided by the county.

(2004 Code, § 141-51) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018)

ENFORCEMENT**§ 171.195 AUTHORITY OF THE COUNTY.**

The county shall have the authority to enforce the provisions of this chapter by issuing all notices and orders necessary to ensure compliance with this chapter, make the needed repairs to premises and equipment thereon, close and vacate any premises, or demolish any building.

(2004 Code, § 141-52) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.196 NOTICES AND ORDERS.

(A) **General.** The county may issue a notice or order to the property owner, tenant, or upon the holder of any encumbrance of record upon a determination that:

- (1) There has been a violation of this chapter;
- (2) The county has reasonable grounds to believe that a violation has occurred;
- (3) The county has deemed it necessary to make needed repairs to correct a violation;
- (4) The county has made a determination to condemn a premises or equipment thereon;
- (5) The county has made a determination to close and vacate any premises; or
- (6) The county has deemed it necessary to demolish any building.

(B) **Application.** The county shall issue a notice or order pursuant to § 171.198, except as provided for in § 171.200.

(C) **Date to comply.** All notices and orders shall specify a date in which the property owner or tenant shall comply therewith.

(2004 Code, § 141-53) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.197 TYPES OF NOTICES AND ORDERS.

(A) **Notice of violation and corrective action.** Whenever the county determines that there has been a violation of this chapter, the county shall issue a notice of violation and corrective action notice to the property owner, tenant, or upon the holder of any encumbrance of record.

(B) **Notice of intent to make repairs.** Before the county makes any repairs to correct a violation, pursuant to § 171.199, the county shall issue a notice of intent to make repairs to the property owner, tenant, or upon the holder of any encumbrance of record.

(C) **Condemnation order.** If the county deems a premises or equipment thereon to be unsafe or unfit, the county shall issue a condemnation order to the property owner, tenant, or upon the holder of any encumbrance of record.

(D) **Order to close and vacate.** Upon the county condemning a premises or equipment thereon, the county may issue an order to close and vacate to the property owner, tenant, or upon the holder of any encumbrance of record.

(E) **Demolition order.** If the county deems it necessary to order a condemned building demolished, the county shall issue a demolition order to the property owner, or upon the holder of any encumbrance of record.

(F) **Costs.** Any costs incurred due to a violation by the tenant or landlord shall be the sold responsibility of the party which created or caused the violation.

(2004 Code, § 141-54) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.198 SERVICE OF NOTICES AND ORDERS.

(A) A notice or order shall be deemed to be properly served by one of the following methods:

(1) By delivering to the person to be served a copy of the notice or order; or

(2) By mailing to the person to be served, at his or her last known address, by certified or registered mail with return receipt requested, a copy of the notice or order.

(B) If the notice or order required by division (A)(2) above is returned with receipt showing that it is unable to be delivered, service can be accomplished by posting a copy of the notice or order in a conspicuous place in or about the premises affected by the notice.

(2004 Code, § 141-55) (Ord. 70, passed 9-29-1988)

§ 171.199 REMEDIES FOR FAILURE TO COMPLY.

In the event a property owner or tenant fails to perform an act required by this chapter or by the county, after notice is served, the county may cause the act to be performed by its own labor or by contract, and the violating party shall be responsible for the costs thereof. The County Attorney may institute any appropriate action or proceedings to recover these costs from the violating party.

(2004 Code, § 141-56) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.200 EMERGENCY ACTION.

Whenever, in the opinion of the county, a hazard exists which requires immediate action to protect the public health, safety, or welfare, the county may, without notice, take action to correct the hazard, and the person responsible for causing the action to be performed shall be responsible for the costs thereof. The County Attorney may institute any appropriate action or proceeding to recover these costs.

(2004 Code, § 141-57) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.201 DISPLACEMENT.

(A) **General.** No person may be displaced unless the county determines that continued habitation will constitute a substantial risk to the person's health, safety, or welfare.

(B) **Relocation.** The property owner shall provide any person, displaced by enforcement of this chapter, with housing of comparable affordability within a reasonable distance of the vacated premises.

(C) **Exception.** If displacement is a direct result of action or violation by the tenant or a result from an act of God, the property owner is not responsible for relocation of the tenant.

(D) **Failure to comply.** If a property owner fails or refuses to relocate a displaced person, the tenant shall provide alternate housing until such time as the county authorizes reoccupation of the condemned premises or until the property owner provides alternative housing.

(E) **Liability of costs.** The property owner shall be responsible for all necessary and reasonable costs of displacement or relocation pursuant to division (D) above. In addition, the displaced person shall continue to be responsible for the payment of rent in the same amount as paid to the property owner immediately prior to the displacement.

(2004 Code, § 141-58) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.202 WAIVER.

(A) **General.** The county may waive applicability of this chapter, in whole or part, on application of the property owner if:

(1) Adequate notice in a form and manner specified by the county is afforded any tenant of the unit;

(2) The tenant affected is afforded an opportunity to comment on the application either in writing or in person; and/or

(3) The waiver would not threaten the public health, safety, or welfare of any occupant of the premises.

(B) **Exception.** The county may waive applicability of this chapter if the waiver is required by the religious practices of the tenant of the dwelling unit and the waiver would not constitute a safety hazard.

(C) **Applicability.** Any waiver granted pursuant to this chapter shall continue in full force and effect, unless otherwise stated, beyond the term of the lease of the current tenant.

(2004 Code, § 141-59) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

§ 171.203 CONFLICTING ORDERS.

The county shall confer with the other governmental official or agency for the purpose of eliminating conflicting orders before any are issued. The county shall not, however, cause the delay of the issuance of any orders by any governmental official or agency which the governmental official or agency determines must be issued.

(2004 Code, § 141-60) (Ord. 70, passed 9-29-1988; Ord. 2018-06, passed 6-28-2018)

§ 171.204 TRANSFER OF OWNERSHIP.

A property owner who has received any notice of violation or order shall not sell, transfer, mortgage, lease, or otherwise dispose of the premises until he or she has complied with the notice or order or until the property owner shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of the notice or order issued by the county and shall furnish to the county a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, in which he or she acknowledges the receipt of the notice or order and states that he or she fully accepts and assumes the responsibility, without condition, for compliance with such notice or order.

(2004 Code, § 141-61) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002; Ord. 2018-06, passed 6-28-2018)

CONFLICTING ORDINANCES**§ 171.215 BEST CONDITIONS TO PREVAIL.**

If this chapter conflicts with any other law or ordinance for the construction, repair, alteration, or use of buildings, equipment, or facilities, the one which requires that properties be kept in the best possible condition shall prevail.

(2004 Code, § 141-64) (Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)

§ 171.999 PENALTY.

(A) **Criminal penalty.** Any person who fails to perform any act required by any provision of this chapter, or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of up to \$500, imprisonment in the county jail not exceeding three months, or both. Each day the violation continues shall be deemed a separate offense.

(2004 Code, § 141-62)

(B) Enforcement.

(1) **General.** Any penalty ordered under this chapter is in addition to and is not a substitute for any other penalty authorized under a federal, state, or local law.

(2) **Other actions.** In addition to any other remedy or penalty provided herein, the County Attorney is authorized to institute all appropriate actions or proceedings to prevent or abate a violation of this chapter or to enforce a requirement of this chapter.

(2004 Code, § 141-63)

(Ord. 70, passed 9-29-1988; Ord. 02-19, passed 11-21-2002)



To: City of Westminster Board of Zoning Appeals

From: Andrew R. Gray, Comprehensive Planner

Cc: Bill Mackey, AICP, Planning Director

Date: March 1, 2019

Subject: BZA Case# 19-01 Staff Memo

An application by Donna Dressel and John Dressel, and property owner, Edgar L. Rase and Margaret D. Rase, requesting approval of a special exception for **firearm sales** located at **19 North Court Street**, Westminster, Maryland 21157, pursuant to Article VIII B: D-B Downtown Business, Section 164-45.9 A. (12), Special Exceptions, of the City Code.

I. History and Facts

On February 5, 2019, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 19 North Court Street. The zoning is D-B: Downtown Business. The Maryland State Department of Assessments and Taxation records indicate the property is owned by Rase Edgar L and Rase Margaret D.

II. Required Notice

On February 7, 2019, a copy of the agenda was posted on the City's website. On February 8, 2019, a Notice of Hearing was sent via certified mail to the subject adjoining property owners and property owner. On February 8, 2019, the property was posted with a Zoning Notice sign. On February 10, 2019, a Notice of Hearing appeared in the Carroll County Times. On February 17, 2019, a second Notice of Hearing appeared in the Carroll County Times. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meeting Act. As of the date of this staff report, the City has not received a written request for inspection of the property, per § 164-166 E.

III. Conditions for grant of special exceptions

Pursuant to § 164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to § 164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

The 2009 Comprehensive Plan sets goals including:

Goal E2, Objective 3: “: Support the retention and expansion of existing businesses, while exploring opportunities for new business development.”

The applicant’s proposal appears to be supported by Goal E2, Objective 3.

- (2) The proposed use at the selected location will not:

- (a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to public health associated with the proposed special exception use at this particular location.

Testimony should include the safety measures that will be taken to ensure the continued security of residents and workers in the surrounding neighborhood.

- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues related to the granting of this special exception request at this particular location related to public infrastructure.

- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties. These properties are zoned as the following:

North: D-B: Downtown Business, B: Business, and R-7,500 Residential

South: D-B: Downtown Business

East: D-B: Downtown Business and R-7,500 Residential

West: D-B: Downtown Business

The special exception use is proposed on property in the D-B: Downtown Business zone.

- (3) The standards set forth for each particular use for which a special exception may be granted have been met.

Per § 164-45.9 A. (12), firearm sales are subject to the provisions of § 164-155.3. For reference, Ordinance #903, approved on January 14, 2019, by the Mayor and Common Council, is attached to this staff report and outlined below.

The applicant must provide testimony confirming all requirements in § 164-155.3 have met current industry standards. In order to do so, the applicant would present evidence indicating what current industry standards are, for example, with expert testimony, and the evidence that shows how these standards will be met.

Per Ordinance #903: § 164-155.3 Firearms Sales in the D-B Downtown Business Zone:

A. FIREARM SALES MAY BE PERMITTED AS A SPECIAL EXCEPTION IN THE D-B ZONE UPON APPROVAL BY THE BOARD OF ZONING APPEALS FOR BUSINESSES WITH THE PRIMARY PURPOSE OF FIREARMS TRAINING AND/OR SALES IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE, PROVIDED THAT THE FOLLOWING STANDARDS AND REQUIREMENTS ARE MET BELOW. THE DISTANCE REQUIREMENTS FROM DWELLINGS, SCHOOLS, CHURCHES AND INSTITUTIONS FOR HUMAN CARE ARE WAIVED FOR FIREARMS SALES VIA AN EXCEPTION TO § 164-140 UNDER SUBSECTION H. BELOW.

1. A LOADING AND UNLOADING STATION MUST BE PROVIDED WITHIN THE FACILITY WHERE FIREARMS ARE TO BE SOLD. STATIONS SHALL BE COMPRISED OF HEAVY STEEL ENCLOSURES TO SAFELY CONTAIN ANY ERRANT ROUND FIRED WHILE LOADING OR UNLOADING A FIREARM.

Testimony should include how the industry's current standards have been addressed.

2. AN INDUSTRY-STANDARD ALARM SYSTEM MUST BE PROVIDED. ALARM SYSTEMS MUST BE TECHNICALLY ROBUST AND ENCOMPASS GLASS PROTECTION, INTERIOR AND EXTERIOR DOORS, ACCESS PANELS AND DUCTS. A PANIC BUTTON MUST BE PROVIDED. THE SYSTEM MUST BE EXTERNALLY-MONITORED.

Testimony should include how the industry's current standards have been addressed. The applicant has submitted photographs as part of their pre-hearing statement.

3. AN INDUSTRY-STANDARD VIDEO SURVEILLANCE SYSTEM MUST BE PROVIDED. VIDEO SURVEILLANCE SYSTEMS MUST INCLUDE COVERAGE OF ALL ENTRANCES AND EXITS, REGISTER AREAS, LOADING AREAS, AND RESTRICTED FIREARMS STORAGE AREAS. CAMERAS SHOULD ALSO BE VISIBLE TO THE PUBLIC TO SERVE AS A CRIME DETERRENT.

Testimony should include how the industry's current standards have been addressed. The applicant has submitted photographs as part of their pre-hearing statement.

4. FIREARMS SALES FACILITIES SHALL PROVIDE BREAK-RESISTANT DOORS, GATES, GLASS, SECURITY GRILLS AND GATES.

Testimony should include how the industry's current standards have been addressed. The applicant has submitted photographs as part of their pre-hearing statement.

5. EXTERIOR AND INTERIOR LIGHTING MUST BE PROVIDED WITH AUTOMATIC TIMERS TO FUNCTION FROM DUSK TO DAWN EACH DAY.

Testimony should include how the industry's current standards have been addressed.

6. ALL EXTERIOR DOORS MUST HAVE COMMERCIAL-QUALITY LOCKS AND DOOR HARDWARE, DEAD BOLTS, GUARD PLATES, EMERGENCY EGRESS LOCKS AND SECONDARY LOCKING MECHANISMS.

Testimony should include how the industry's current standards have been addressed.

7. FIREARMS MAY ONLY BE DISPLAYED IN HIGH-SECURITY SHOWCASES, FIREARM SAFES, CABLE LOCKS AND SECURE STOCKROOMS. ALL FIREARMS MUST BE REMOVED FROM DISPLAY AND PLACED IN SECURE STORAGE DURING THE HOURS THE ESTABLISHMENT IS CLOSED. A SECURITY PROTOCOL FOR ALL TRANSFER TIMES MUST BE ESTABLISHED.

Testimony should include how the industry's current standards have been addressed. The applicant has submitted photographs as part of their pre-hearing statement.

8. FIREARMS SALES USES SHALL NOT BE SUBJECT TO THE ADDITIONAL DISTANCE REQUIREMENTS IN § 164-140 (I.E., 100 FEET FROM ANY PROPERTY THAT CONTAINS A DWELLING, SCHOOL, CHURCH OR INSTITUTION FOR HUMAN CARE).
9. ANY WALL ABUTTING ANOTHER STRUCTURE DESIGNED OR INTENDED FOR HUMAN OCCUPANCY MUST BE CONSTRUCTED OF OR FACED WITH A BULLET-RESISTANT MATERIAL.

Testimony should include how the industry's current standards have been addressed.

- B. NO FIREARMS SALES MAY BE CONDUCTED IN ANY PREMISES ON ANY LOT THAT IS CONTIGUOUS TO MAIN STREET.

The property at 19 North Court Street is not contiguous to Main Street.

- C. NOTWITHSTANDING ANY OTHER PROVISION IN THE CODE, FIREARMS SALES USES APPROVED UNDER THIS SECTION AND LOCATED IN AN EXISTING BUILDING SHALL BE EXEMPT FROM ALL PARKING REQUIREMENTS IN § 164-111.
- D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE, A SPECIAL EXCEPTION GRANTED BY THE BOARD OF ZONING APPEALS UNDER THIS SECTION WILL LAPSE SIX (6) MONTHS AFTER THE CESSATION OF THE BUSINESS WITH THE PRIMARY PURPOSE OF FIREARMS TRAINING AND/OR THE SALE OF FIREARMS.
- E. THE WESTMINSTER POLICE DEPARTMENT SHALL INSPECT THE PREMISES BIENNIALLY FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

Please note the applicant must provide evidence to the Board that all items in § 164-155.3 of the City Code have been addressed to industry standards. The Westminster Police Department will inspect the facility to verify that all requirements contained in the Code have been addressed.

IV. Criteria for determination

Pursuant to § 164-169, the following general criteria are included for use by the Board at its discretion.

§ 164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*
 - (1) *The number of people residing or working in the immediate area concerned.*
 - (2) *The orderly growth of a community.*
 - (3) *Traffic conditions and facilities.*
 - (4) *The effect of such use upon the peaceful enjoyment of people in their homes.*
 - (5) *The conservation of property values.*
 - (6) *The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.*
 - (7) *The most appropriate use of land and structure.*
 - (8) *Prior decisions of the courts regarding such matters.*
 - (9) *The purpose of the regulations as set forth in this chapter.*

(10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

(11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.

(12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Conclusion and Additional Consideration

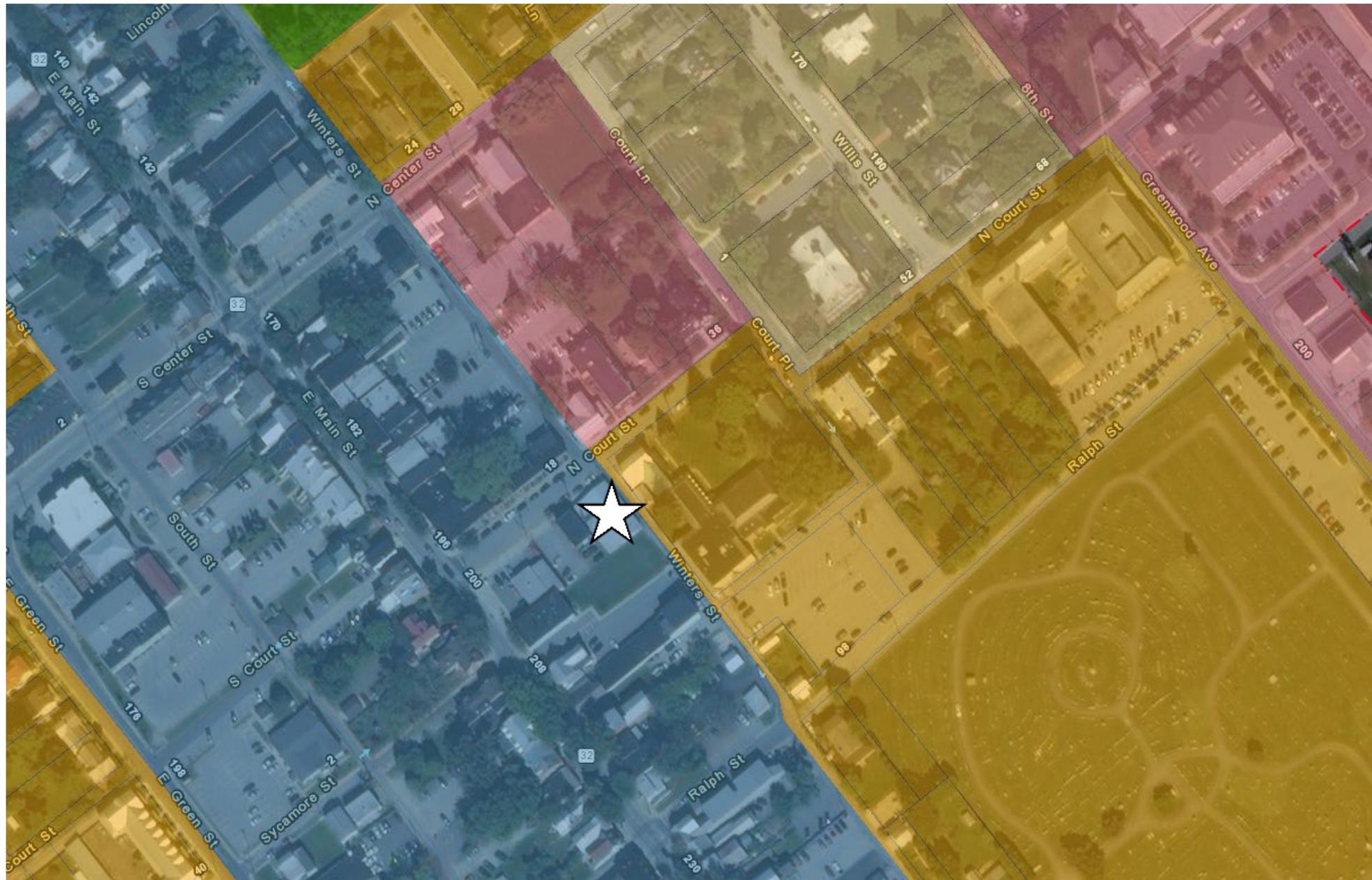
Pursuant to § 164-170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

[City staff recommends that the Board of Zoning Appeals carefully consider approval of the proposed Special Exception.](#)

Attachments

- Sub-exhibit map related to § 164-170 A. (2)(c)
- SDAT Real Property Search Information
- Ordinance No. 903

City of Westminster Zoning



Legend



Site



D-B: Downtown Business



R-7,500 Residential



R-10,000 Residential



B- Business

Real Property Data Search (w1)

Search Result for CARROLL COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration				
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Account Identifier:		District - 07 Account Number - 064640							
Owner Information									
Owner Name:		RASE EDGAR L RASE MARGARET D			Use:		COMMERCIAL		
Mailing Address:		338 E MAIN ST WESTMINSTER MD 21157-5518			Principal Residence:		NO		
					Deed Reference:		/00912/ 00072		
Location & Structure Information									
Premises Address:		19 COURT ST WESTMINSTER 21157-0000			Legal Description:		LT - 4965 SF 19 COURT ST WESTMINSTER		
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0107	0011	1104		0000				2018	
Special Tax Areas:		Town:			WESTMINSTER				
		Ad Valorem:							
		Tax Class:							
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area		County Use	
1935		4290				4,965 SF			
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation			
		RETAIL STORE							
Value Information									
		Base Value	Value	Phase-in Assessments					
			As of	As of		As of			
			01/01/2018	07/01/2018		07/01/2019			
Land:		66,500	66,500						
Improvements		192,700	208,900						
Total:		259,200	275,400	264,600		270,000			
Preferential Land:		0				0			
Transfer Information									
Seller: QUALITY GLASS & ALUM INC			Date: 08/01/1985			Price: \$112,500			
Type: NON-ARMS LENGTH OTHER			Deed1: /00912/ 00072			Deed2:			
Seller:			Date:			Price:			
Type:			Deed1:			Deed2:			
Seller:			Date:			Price:			
Type:			Deed1:			Deed2:			
Exemption Information									
Partial Exempt Assessments:		Class		07/01/2018		07/01/2019			
County:		000		0.00					
State:		000		0.00					
Municipal:		000		0.00 0.00		0.00 0.00			
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Homestead Application Information									
Homestead Application Status: No Application									
Homeowners' Tax Credit Application Information									
Homeowners' Tax Credit Application Status: No Application					Date:				

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

ORDINANCE NO. 903 (AS AMENDED BY INTERLINEATION)

AN ORDINANCE AMENDING CHAPTER 164, "ZONING", OF THE WESTMINSTER CITY CODE, ARTICLE VIII B, "D-B DOWNTOWN BUSINESS ZONE", SECTION 164-45.9, "SPECIAL EXCEPTIONS", TO PERMIT FIREARMS SALES SUBJECT TO CERTAIN CONDITIONS AND TO ADD ARTICLE XX, "SPECIAL PROVISIONS," SECTION 164-155.3, "FIREARMS SALES IN THE D-B DOWNTOWN BUSINESS ZONE."

WHEREAS, pursuant to the Local Government Article of the Annotated Code of Maryland, § 5-213, the Mayor and Common Council of Westminster, Maryland (the "City") has the authority to provide reasonable zoning regulations subject to the referendum of the voters at regular or special elections; and

WHEREAS, pursuant to Sections 11 through 18 of the City Charter, the City has, for the purpose of promoting the health, security, general welfare and morals of the community, the authority to divide the City into zoning districts and to regulate therein the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land, in accordance with a comprehensive plan and for enumerated purposes, which include the control and direction of municipal expansion and development, provided that such regulations are to be made with reasonable consideration of the character of the districts and their peculiar suitabilities for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, pursuant to the aforesaid authority and the additional authority contained in Md. Code Annotated, Land Use Article, Division 1, "Single Jurisdiction Planning and Zoning", Title 4, "Zoning" (formerly, Md. Code Ann., Art. 66B, § 4.01 *et seq.*), the City has enacted Chapter 164, "Zoning", of the City Code; and

WHEREAS, pursuant to Chapter 164, § 164-183, the City's Planning Commission is charged with reviewing proposed amendments to the text of that chapter and submitting a report and recommendation to the Mayor and Common Council with respect to such proposed amendments; and

WHEREAS on or about December 13, 2018, the Planning Commission considered a proposal from the Common Council to amend the zoning ordinance to permit the sale of firearms in certain zones; and

WHEREAS, on December 13, 2018, the Planning Commission issued a report recommending approval of the proposed amendment; and

WHEREAS, an amendment to the text of Chapter 164 of the City Code to incorporate the proposal was introduced before the Mayor and Common Council at a regular meeting on or

- UNDERLINED SMALL CAPS : Indicate matter added to existing law.
- ~~Strikethrough~~ : Indicate matter deleted from existing law.
- *** Asterisks : Indicate matter retained in existing law but omitted herein

about December 10, 2018, and, on or about January 14, 2019, a public hearing relating to the aforementioned amendment was held, as required by Section 18 of the City Charter and § 164-186.1 of the City Code; and

WHEREAS, the Mayor and Common Council deem it appropriate to permit the sale of firearms in the Downtown-Business Zone.

Section 1. NOW THEREFORE BE IT ENACTED AND ORDAINED by the Mayor and Common Council of Westminster, that Chapter 164, "Zoning", of the Westminster City Code, Article VIII B, "D-B Downtown Business Zone", §164-45.9, "Special Exceptions", shall be and hereby is amended as follows:

§164-45.9 Special Exceptions

Section 1. **NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Mayor and Common Council of Westminster, that Chapter 164, "Zoning and Subdivision of Land", of the Westminster City Code, Article VIII B, "D-B Downtown Business Zone", § 164-45.9, "Special Exceptions", shall be and hereby is amended as follows:

§164-45.9 Special exceptions.

A. The following uses may be permitted as special exceptions in accordance with the provisions of Article XXII:

(11) Conversion dwellings, subject to the requirements of § 164-150 and the County Health Department.

(12) FIREARMS SALES, SUBJECT TO THE PROVISIONS OF § 164-155.3.

~~(12)~~ (13) Hotels and motels.

~~(13)~~ (14) Laundromats.

~~(14)~~ (15) Laundry or dry-cleaning establishments with drive-through service, provided that the applicant proves that the use will not adversely affect pedestrian travel.

~~(15)~~ (16) Microbreweries and pub breweries licensed under [Article 2B of the] Annotated Code of Maryland, Alcoholic Beverages Article.

~~(16)~~ (17) Multiple-family dwellings, subject to the provisions of § 164-153.

~~(17)~~ (18) Newspaper publishing establishments.

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~~(18)~~ (19) Pet shops.

~~(19)~~ (20) Public utility buildings, structures or uses, including radio, television and other communication facilities not considered essential utility equipment, as enumerated in §164-139.

~~(20)~~ (21) Service stations, subject to the provisions of § 164-149.

~~(21)~~ (22) Sheet metal shops containing 500 square feet or less.

~~(22)~~ (23) Single-family detached dwellings and single-family semidetached dwellings, subject to the provisions of § 164-154.

~~(23)~~ (24) Swimming pools, parks and recreation areas, provided that such uses shall be two times the distance requirements for residential uses as specified in § 164-140.

B. ~~The buying, selling or trading of firearms shall not be allowed under any of the special exceptions permitted under this section.~~ RESERVED.

Section 2. BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Common Council of Westminster that Chapter 164, "Zoning and Subdivision of Land", of the Westminster City Code, Article XX, "Special Provisions" shall be and is hereby amended to add §164-155.3, "Firearm Sales in the D-B Downtown Business Zone" as follows:

§164-155.3 Firearms Sales in the D-B Downtown Business Zone

A. FIREARM SALES MAY BE PERMITTED AS A SPECIAL EXCEPTION IN THE D-B ZONE UPON APPROVAL BY THE BOARD OF ZONING APPEALS FOR BUSINESSES WITH THE PRIMARY PURPOSE OF FIREARMS TRAINING AND/OR SALES IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE, PROVIDED THAT THE FOLLOWING STANDARDS AND REQUIREMENTS ARE MET BELOW. THE DISTANCE REQUIREMENTS FROM DWELLINGS, SCHOOLS, CHURCHES AND INSTITUTIONS FOR HUMAN CARE ARE WAIVED FOR FIREARMS SALES VIA AN EXCEPTION TO §164-140 UNDER SUBSECTION H. BELOW.

1. A LOADING AND UNLOADING STATION MUST BE PROVIDED WITHIN THE FACILITY WHERE FIREARMS ARE TO BE SOLD. STATIONS SHALL BE COMPRISED OF HEAVY STEEL ENCLOSURES TO SAFELY CONTAIN ANY ERRANT ROUND FIRED WHILE LOADING OR UNLOADING A FIREARM.
2. AN INDUSTRY-STANDARD ALARM SYSTEM MUST BE PROVIDED. ALARM SYSTEMS MUST BE TECHNICALLY ROBUST AND ENCOMPASS GLASS PROTECTION, INTERIOR

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AND EXTERIOR DOORS, ACCESS PANELS AND DUCTS. A PANIC BUTTON MUST BE PROVIDED. THE SYSTEM MUST BE EXTERNALLY-MONITORED.

3. AN INDUSTRY-STANDARD VIDEO SURVEILLANCE SYSTEM MUST BE PROVIDED. VIDEO SURVEILLANCE SYSTEMS MUST INCLUDE COVERAGE OF ALL ENTRANCES AND EXITS, REGISTER AREAS, LOADING AREAS, AND RESTRICTED FIREARMS STORAGE AREAS. CAMERAS SHOULD ALSO BE VISIBLE TO THE PUBLIC TO SERVE AS A CRIME DETERRENT.
4. FIREARMS SALES FACILITIES SHALL PROVIDE BREAK-RESISTANT DOORS, GATES, GLASS, SECURITY GRILLS AND GATES.
5. EXTERIOR AND INTERIOR LIGHTING MUST BE PROVIDED WITH AUTOMATIC TIMERS TO FUNCTION FROM DUSK TO DAWN EACH DAY.
6. ALL EXTERIOR DOORS MUST HAVE COMMERCIAL-QUALITY LOCKS AND DOOR HARDWARE, DEAD BOLTS, GUARD PLATES, EMERGENCY EGRESS LOCKS AND SECONDARY LOCKING MECHANISMS.
7. FIREARMS MAY ONLY BE DISPLAYED IN HIGH-SECURITY SHOWCASES, FIREARM SAFES, CABLE LOCKS AND SECURE STOCKROOMS. ALL FIREARMS MUST BE REMOVED FROM DISPLAY AND PLACED IN SECURE STORAGE DURING THE HOURS THE ESTABLISHMENT IS CLOSED. A SECURITY PROTOCOL FOR ALL TRANSFER TIMES MUST BE ESTABLISHED.
8. FIREARMS SALES USES SHALL NOT BE SUBJECT TO THE ADDITIONAL DISTANCE REQUIREMENTS IN § 164-1 N 40 (I.E., 100 FEET FROM ANY PROPERTY THAT CONTAINS A DWELLING, SCHOOL, CHURCH OR INSTITUTION FOR HUMAN CARE).
9. ANY WALL ABUTTING ANOTHER STRUCTURE DESIGNED OR INTENDED FOR HUMAN OCCUPANCY MUST BE CONSTRUCTED OF OR FACED WITH A BULLET-RESISTANT MATERIAL.

B. NO FIREARMS SALES MAY BE CONDUCTED IN ANY PREMISES ON ANY LOT THAT IS CONTIGUOUS MAIN STREET.

C. NOTWITHSTANDING ANY OTHER PROVISION IN THE CODE, FIREARMS SALES USES APPROVED UNDER THIS SECTION AND LOCATED IN AN EXISTING BUILDING SHALL BE EXEMPT FROM ALL PARKING REQUIREMENTS IN § 164-111.

D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE, A SPECIAL EXCEPTION GRANTED BY THE BOARD OF ZONING APPEALS UNDER THIS SECTION WILL LAPSE SIX (6) MONTHS AFTER THE CESSATION OF THE BUSINESS WITH THE PRIMARY PURPOSE OF FIREARMS TRAINING AND/OR THE

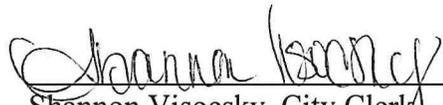
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SALE OF FIREARMS.

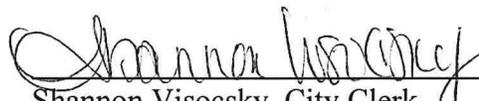
E. THE WESTMINSTER POLICE DEPARTMENT SHALL INSPECT THE PREMISES BIENNIALY FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

Section 3. BE IT FURTHER ORDAINED BY THE MAYOR AND COMMON COUNCIL OF WESTMINSTER that this Ordinance shall take effect ten (10) days after the date of its passage and approval, unless it is returned unsigned by the Mayor at the next meeting of The Mayor and Common Council together with the Mayor's reasons for withholding his signature therefrom, and is not passed thereafter by the votes of four-fifths of the members of the Common Council, and further provided that it is posted after adoption for not less than two weeks in some conspicuous location in the City Hall and recorded in a book provided for that purpose.

INTRODUCED this 10th day of December, 2018.


Shannon Visocsky, City Clerk

PASSED this 14th day of January, 2019.


Shannon Visocsky, City Clerk

APPROVED this 14th day of January, 2019.


Joe Dominick, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

this 13th day of January, 2019:


Elissa D. Levan, City Attorney

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To: Westminster Board of Zoning Appeals

From: Andrew R. Gray, Comprehensive Planner

Cc: Bill Mackey, AICP, Planning Director

Date: May 3, 2019

Subject: BZA Case# 19-03 Staff Memo

An application by 7-Eleven, Inc. and property owner, Getty Properties Corp., requesting approval of a special exception for a **service station use**, to be located at **353 Baltimore Boulevard**, Westminster, Maryland 21157, pursuant to Article VIII: B Business, Section 164-42 S., Special Exceptions; Article XX: Special Provisions, Section 164-149; and Article XVII: Signs, Section 164-121 D., of the City Code.

I. History and Facts

On April 1, 2019, an application was submitted to the Board of Zoning Appeals (BZA) for a special exception at 353 Baltimore Boulevard. The zoning is B: Business. The Maryland State Department of Assessments and Taxation records indicate the property is owned by Aero Realty Inc. The application indicates Getty Properties Corp. Counsel for the applicant has provided documentation regarding ownership for the Board's review (attached).

II. Required Notice

On April 10, 2019, a copy of the agenda was posted on the City's website. On April 10, 2019, a Notice of Hearing was sent via certified mail to the adjoining property owners and the subject property owner. On April 11, 2019, the property was posted with a Zoning Notice sign. On April 14, 2019, a Notice of Hearing appeared in the Carroll County Times. On April 21, 2019, a second Notice of Hearing appeared in the Carroll County Times. These notices were provided to meet the notification requirements set forth in §164-166 of the City Code and the Maryland Open Meeting Act. As of the date of this staff report, the City has not received a written request for inspection of the property, per §164-166 E.

III. Conditions for grant of special exceptions

Pursuant to §164-161 A. (2), the Board of Zoning Appeals is empowered "to hear and decide special exceptions as such exceptions are authorized by this chapter." Pursuant to §164-170 A., "The Board may grant a special exception when it finds from a preponderance of the evidence of record that:"

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

[The 2009 Comprehensive Plan sets goals including: Goal E2, Objective 3: "Support the retention and expansion of existing businesses, while exploring opportunities for new business development."](#)
[The applicant's proposal appears to be supported by Goal E2, Objective 3.](#)

(2) The proposed use at the selected location will not:

(a) Adversely affect the health and safety of residents or workers in the area;

There are no known concerns related to public health associated with the proposed special exception use at this particular location. Testimony should include safety measures that will be taken to ensure the proposed service station will not pose any hazards to adjacent properties, the public, and employees.

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

There are no known issues related to the granting of this special exception request at this particular location related to public infrastructure. Any calculated increases in water use will require a water allocation approved by the City and the Maryland Department of Environment.

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

The special exception use is proposed on property in the B: Business zone. For the purposes of the special exception review, the neighborhood is proposed as the immediately surrounding properties. These properties are zoned as follows:

North: B: Business and PRSC: Planned Regional Shopping Center
South: B: Business
East: B: Business and PRSC: Planned Regional Shopping Center
West: B: Business

Testimony and evidence should include how these provisions are addressed.

(3) The standards set forth for each particular use for which a special exception may be granted have been met.

Per §164-42 S, Service stations are subject to the provisions of §164-149 of the City Code (below). Please note that staff comments in blue text below are intended to provide information for the Board. Staff comments are not intended to substitute for testimony and evidence required of the applicant.

§164-149 Automobile service stations.

A. An automobile service station may be permitted upon a finding by the Board, in addition to the findings required in Article XXII of this chapter, that:

(1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.

(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other buildings or proposed

buildings on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of public assembly.

On March 20, 2019, the City's engineering consultant, HLS, concluded that the traffic scope presented was acceptable. The City's consultant concurred with the recommendations of the Maryland Department of Transportation and State Highway Administration. These agencies recommend that the City require a right-in only for the site entrance from Center Street and a right-out only at the site exit onto Center Street. This corresponds with the future widening of Center Street required by the City for the Westminster Station redevelopment. This project is to be constructed across Center Street at 343 Baltimore Boulevard (Len Stoler Chevy site).

- (2) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering the service required, the population, character, density and number of similar uses.
- (3) The evidence of record establishes that for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City and that the use at the location proposed will not result in a multiplicity of proposed uses. In the absence of convincing evidence to the contrary, the following shall constitute lack of probability of a reasonable public need:
 - (a) An automobile service station within one mile on the same side of the road, except at intersections.
 - (b) The presence of two service stations within the four quadrants of an intersection, including 1/2 mile from the center of the intersection in any direction.

Please note these provisions relate to a presumption, in the absence of convincing evidence, regarding the probability of a reasonable public need. Evidence put forward by the applicant would therefore allow the Board to move beyond this presumption.

- (4) The proposed use will be conducted upon a lot having a minimum area of 20,000 square feet, provided that this size is adequate to meet the necessary services and the setback and buffering requirements, and a minimum lot frontage of 120 feet on a public road shall be required for each automobile service station site.

According to the plans included in the application, the site area is 35,637 square feet. The property also has a frontage of over 500 feet along Baltimore Boulevard and Center Street.

- (5) The lot shall contain landscaping on a minimum of 10% of the site area.

B. In addition, the following requirements shall be met:

- (1) When such abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted Master Plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence not less than five feet in height, together with a three-foot

planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Screening shall not be required on street frontage.

The property at 353 Baltimore Boulevard is not located adjacent to any residential zone or institutional premises. Screening will be evaluated during the site plan review process.

- (2) Signs, products displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways shall be prohibited.
- (3) Lighting shall be designed and controlled so that any light source, including the interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways or parking areas. Such lighting shall not shine on or reflect on or into residential structures.

A photometric plan will be evaluated during the site plan review process.

- (4) All gasoline service station developments shall meet City off-street parking standards to ensure the safe movement of vehicles and pedestrians. The arrangement of structures, islands, driveways, parking and landscaping shall be designed so as to ensure maneuvering ease, to serve the community and not to adversely affect adjacent properties.

Article XVI is attached for more information on the City Off-Street Parking and Loading requirements. Article XVI will be reviewed during the site plan process. The Planning and Zoning Commission reviews all proposed site plans regarding final approval.

- (5) Driveways shall be designed and located to ensure a safe and efficient movement of traffic on and off the site from the lane of traffic nearest the curb. The design, location and construction of all vehicular access driveways shall be in accordance with the applicable specifications and standards of the Department of Public Works.

The Maryland Department of Transportation and State Highway Administration recommend that the City require a right-in only for the site entrance from Center Street and a right-out only at the site exit onto Center Street.

- (6) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line, and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall normally be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb- or street line unless the Planning Director determines that those configurations would present an unreasonable risk to vehicular and pedestrian traffic and grants a modification of those requirements which would eliminate or minimize such risks.

The gas pumps or other service appliances must be located 40 feet from the property line (30-foot building setback plus 10 feet behind the building line). This appears to be a safety-related requirement. The proposed gas pumps are located 40 feet from Center Street and 41 feet from MD 140. There are two site access points, one on Center Street and one on MD 140. The air/vacuum unit is proposed inside the safety-related setback; however, since these units do not pose nearly the same risks as gas pumps and other flammable-fuels-dispensing appliances (diesel, kerosene, etc.), the safety-related setback would not necessarily apply.

The minimum building lines for the Business zone are as follows:

Per §164-45 B.		
Location	Required	Proposed
Front	30 feet or equal to the setbacks of immediately adjacent buildings, whichever is less, from the public street	<ul style="list-style-type: none"> • 30 feet from property line at Baltimore Boulevard to store • 31 feet from property line at Baltimore Boulevard to canopy • 100+ foot from property line at Center Street to store • 40.81 feet from property line at Center Street to gas canopy
From parking uses	Five feet from the right-of-way or adjacent lots.	10 feet minimum

(7) Vehicles shall not be parked so as to overhang in the public right-of-way.

The 19 proposed parking spaces do not allow vehicles to overhang in the public right-of-way.

Finally, per §164-158, the proposed use is subject to **§164-140, Distance requirements**, which states:

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care.

Applicant testimony should include how this provisions has been met.

Additional Staff Comments - Parking

Per §164-171 B., the proposal must meet the City’s parking requirements contained in Article XVI (attached). The application is for a service station use. Per §164-111 automobile service stations require two spaces per bay and one space per employee shift. This requirement would imply that cars are being serviced in garage bays and/or repaired on the premises, which is not the case for the submitted proposal.

Per §164-111 a convenience store use would require, as part of the *commercial establishments devoted to retail sales, trade, merchandising or similar uses not otherwise specified herein*, one space for each 250 square feet of floor area used for retail sales, trade or merchandising...

Per plans submitted with the application, the proposed 7-Eleven building is 3,062 square feet. This would require 13 parking spaces. The proposal indicates 19. The proposal provides for sufficient onsite parking.

Additional Staff Comments - Signage

Per §164-121 D. of the City Code, *signs for special exception uses shall be in accordance with the pertinent provisions of this article and approved by the Board of Appeals upon the granting of a special exception. Such signs may be freestanding or attached to a building but shall not exceed 32 square feet in size, except as to signs provided by §164-120C. Lighting for such signs shall not cause glare onto neighboring residential properties or uses and shall be approved upon consideration of the character of the neighborhood in which the special exemption is located...*

According to §164-121 A. (3), *such signs shall be integral with or attached to the building. Additionally, one freestanding sign located at the street right-of-way shall be permitted except as provided in Subsection A(5) hereof. Said freestanding sign shall not exceed 20 feet in total height. The area of all signs on the premises shall not exceed three square feet for each linear foot of the front building wall. No one sign shall exceed 64 square feet in total area except as provided in Subsection A (5) hereof.*

Additionally, according to §164-121 A. (5) (a) of the City Code, *applications for signs...which do not exceed 12.5 feet in height shall be approved by the Zoning Administrator. Applications for signs...up to and including 20 feet in height shall be approved by the Commission.*

The City regulates size and location, not content. If approved, the applicant must submit an Application for Sign or Awning along with detailed drawings, specifying sign sizes and locations for staff and/or the Planning and Zoning Commission to review. The applicant should provide testimony on proposed signage.

IV. Criteria for determination

Pursuant to §164-169, the following general criteria are included for use by the Board at its discretion.

§164-169 Criteria for determination.

In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.

- A. *In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.*
- B. *In deciding such matters, the Board may consider the following factors, together with other relevant factors:*
 - (1) *The number of people residing or working in the immediate area concerned.*
 - (2) *The orderly growth of a community.*
 - (3) *Traffic conditions and facilities.*
 - (4) *The effect of such use upon the peaceful enjoyment of people in their homes.*
 - (5) *The conservation of property values.*
 - (6) *The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.*
 - (7) *The most appropriate use of land and structure.*
 - (8) *Prior decisions of the courts regarding such matters.*
 - (9) *The purpose of the regulations as set forth in this chapter.*
 - (10) *The type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.*
 - (11) *Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.*
 - (12) *Limitations of fire-fighting equipment and the means of access for fire, police and health services.*

(13) The preservation of cultural and historical landmarks.

(14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.

(15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

V. Conclusion and Additional Consideration

Pursuant to §164-170 B., “The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”

Staff recommends that the Board of Zoning Appeals carefully consider approval of the proposed special exception with the following conditions:

- That the entrance from Center Street be configured as a right-in only, and
- That the exit onto Center Street be configured as a right-out only.

Attachments

- Sub-exhibit map related to §164-170 A. (2)(c)
- SDAT real property search information
- Property ownership information
- Article XVI Off-Street Parking and Loading

City of Westminster Zoning



Legend

-  Site
-  R-7,500 Residential
-  B - Business
-  C-Conservation
-  D-B - Downtown Business
-  P-RSC-Planned Regional Shopping Center

Carroll County Zoning



Legend

-  Site
-  R-10,000 Residential
-  R-7,500 Residential
-  BG - General Business

Real Property Data Search (w1)

Search Result for CARROLL COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration				
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Account Identifier:		District - 07 Account Number - 027508							
Owner Information									
Owner Name:		AERO REALTY INC			Use:		COMMERCIAL		
Mailing Address:		C/O GETTY PROPERTIES CORP TWO JERICO PLAZA STE 110 JERICO NY 11753-0000			Principal Residence:		NO		
					Deed Reference:		/00662/ 00268		
Location & Structure Information									
Premises Address:		353 BALTIMORE BLVD WESTMINSTER 21157-0000			Legal Description:		LT - 33976 SQ FT 353 BALTIMORE BLVD WESTMINSTER		
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0105	0020	2765		0000				2018	Plat Ref:
Special Tax Areas:		Town:			WESTMINSTER				
		Ad Valorem:							
		Tax Class:							
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area		County Use	
1983		2585				33,976 SF			
Stories	Basement	Type		Exterior	Full/Half Bath	Garage	Last Major Renovation		
		CONVENIENCE STORE							
Value Information									
		Base Value		Value		Phase-in Assessments			
				As of		As of		As of	
				01/01/2018		07/01/2018		07/01/2019	
Land:		390,700		390,700					
Improvements		266,600		255,000					
Total:		657,300		645,700		645,700		645,700	
Preferential Land:		0						0	
Transfer Information									
Seller:		Date:		Price:					
Type:		Deed1:		Deed2:					
Seller:		Date:		Price:					
Type:		Deed1:		Deed2:					
Seller:		Date:		Price:					
Type:		Deed1:		Deed2:					
Exemption Information									
Partial Exempt Assessments:		Class		07/01/2018		07/01/2019			
County:		000		0.00					
State:		000		0.00					
Municipal:		000		0.00 0.00		0.00 0.00			
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Homestead Application Information									
Homestead Application Status: No Application									
Homeowners' Tax Credit Application Information									
Homeowners' Tax Credit Application Status: No Application					Date:				

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"AERO OIL COMPANY", A PENNSYLVANIA CORPORATION,
WITH AND INTO "GETTY PETROLEUM CORP." UNDER THE NAME OF "GETTY PETROLEUM CORP.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTY-FIRST DAY OF JANUARY, A.D. 1997, AT 10 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

0772019 8100M

AUTHENTICATION:

8310905

971033329

DATE:

01-31-97

**CERTIFICATE OF OWNERSHIP AND MERGER
MERGING
AERO OIL COMPANY
INTO
GETTY PETROLEUM CORP.**

(PURSUANT TO SECTION 253 OF THE GENERAL
CORPORATION LAW OF DELAWARE)

Getty Petroleum Corp., a Delaware corporation (the "Corporation"), does hereby certify:

FIRST: That the Corporation is incorporated pursuant to the General Corporation Law of the State of Delaware.

SECOND: That the Corporation owns all of the outstanding shares of each class of the capital stock of Aero Oil Company, a Pennsylvania corporation.

THIRD: That the Corporation, by the following resolutions of its Board of Directors, duly adopted on the 12th day of December, 1996, determined to merge into itself Aero Oil Company on the conditions set forth in such resolutions:

RESOLVED, that the Corporation merge into itself its subsidiary, Aero Oil Company, and assume all of said subsidiary's liabilities and obligations;

FURTHER RESOLVED, that the President and the Secretary of this Corporation be and they hereby are directed to make, execute and acknowledge a certificate of ownership and merger setting forth a copy of the resolutions to merge said Aero Oil Company into this Corporation and to assume said subsidiary's liabilities and obligations and the date of adoption thereof and to file the same in the office of the Secretary of State of Delaware and a certified copy thereof in the Office of the Recorder of Deeds of New Castle County and to do all acts and things whatsoever, whether within or without the State of Delaware, that may be in any way necessary or proper to effect such merger.

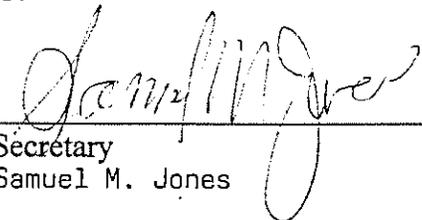
IN WITNESS WHEREOF, said Getty Petroleum Corp. has caused its corporate seal to be affixed and this certificate to be signed by Leo Liebowitz, its President, and attested by Samuel M. Jones, its Secretary, this 28th day of January, 1997.

GETTY PETROLEUM CORP.

By: 

President
Leo Liebowitz

ATTEST:

By: 

Secretary
Samuel M. Jones

4. (Check, and if appropriate complete, one of the following):

The plan of merger shall be effective upon filing these Articles of Merger in the Department of State.

The plan of merger shall be effective on _____ at _____
Date Hour

5. The manner in which the plan of merger was adopted by each domestic corporation is as follows:

Name of corporation	Manner of adoption
Aero Oil Company	Adopted by action of the board of directors of the parent corporation pursuant to 15 Pa. C.S. §1924(b)(3)

6. (Strike out this paragraph if no foreign corporation is a party to the merger). The plan was authorized, adopted or approved, as the case may be, by the foreign business corporation (or each of the foreign business corporations) party to the plan in accordance with the laws of the jurisdiction in which it is incorporated.

7. (Check, and if appropriate complete, one of the following):

The plan of merger is set forth in full in Exhibit A attached hereto and made a part hereof.

Pursuant to 15 Pa.C.S. § 1901 (relating to omission of certain provisions from filed plans) the provisions, if any, of the plan of merger that amend or constitute the operative Articles of Incorporation of the surviving corporation as in effect subsequent to the effective date of the plan are set forth in full in Exhibit A attached hereto and made a part hereof. The full text of the plan of merger is on file at the principal place of business of the surviving corporation, the address of which is:

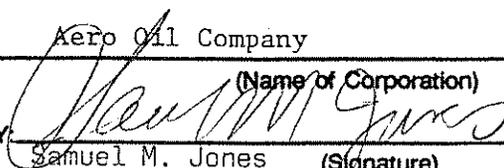
Number and Street	City	State	Zip

IN TESTIMONY WHEREOF, the undersigned corporation or each undersigned corporation has caused these Articles of Merger to be signed by a duly authorized officer thereof this 28th day of January, 19 97.

Getty Petroleum Corp.

BY:  (Name of Corporation)
 Leo Liebowitz (Signature)
 TITLE: President

Aero Oil Company

BY:  (Name of Corporation)
 Samuel M. Jones (Signature)
 TITLE: Vice President

PLAN OF MERGER

That Getty Petroleum Corp., a Delaware corporation, merge into itself its subsidiary, Aero Oil Company, a Pennsylvania corporation, and assume all of said subsidiary's liabilities and obligations.



Department of State

To All to Whom These Presents Shall Come, Greeting:

Whereas, Under the terms of the Business Corporation Law, approved May 5, 1933, P. L. 364, as amended, the Department of State is authorized and required to issue a

CERTIFICATE OF MERGER

evidencing the merger of one or more corporations into one of such corporations under the provisions of that law; and

Whereas, The stipulations and conditions of that law relating to the merger of such corporations have been fully complied with by BLUE RIDGE OIL COMPANY, AEROL, INC., AERO REALTY, INC. and AERO OIL COMPANY.

Therefore, Know Ye, That subject to the Constitution of this Commonwealth and under the authority of the Business Corporation Law, approved May 5, 1933, P. L. 364, as amended, I DO BY THESE PRESENTS, which I have caused to be sealed with the Great Seal of the Commonwealth, merge the above named BLUE RIDGE OIL COMPANY, AEROL, INC., AERO REALTY, INC. with and into AERO OIL COMPANY, the surviving corporation,

which shall continue to be invested with and have and enjoy all the powers, privileges and franchises incident to a domestic business corporation, and be subject to all the duties, requirements and restrictions specified and enjoined in and by the Business Corporation Law and all other applicable laws of this Commonwealth.

Given

Effective: June 1, 1982, 12:01 A.M.
under my Hand and the Great Seal of the Commonwealth, at the City of Harrisburg, this 6th day of May in the year of our Lord one thousand nine hundred and eighty-two and of the Commonwealth the two hundred and sixth.

William R. Davis

Secretary of the Commonwealth

82-25 1681

(line for numbering)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

Filed this 6th day of
May, 1982

Commonwealth of Pennsylvania
Department of State

Effective: June 1, 1982, 12:01 A.M.

William C. Davis

Secretary of the Commonwealth

Articles of Merger-
Business Corporation

pjd

In compliance with the requirements of section 903 of the Business Corporation Law, act of May 5, 1933 (P.L. 364)(15 P.S. § 1903), the undersigned corporations, desiring to effect a merger, hereby certify that:

1. The name of the corporation surviving the merger is:

Aero Oil Company

2. The surviving corporation is a domestic corporation and the location of its registered office in this Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Department):

230 Lincolnway East
New Oxford, Pennsylvania 17350

3. The name and the location of the registered office of each other domestic business corporation and qualified foreign business corporation which is a party to the plan of merger are as follows:

Aero Realty, Inc., 230 Lincolnway East,
New Oxford, PA 17350

Aerol, Inc. 230 Lincolnway East,
New Oxford, PA 17350

Blue Ridge Oil Company 230 Lincolnway East
New Oxford, PA 17350

4. The plan of merger shall be effective on June 1, 1982, at 12:01 A.M.

5. The manner in which the plan of merger was adopted by each domestic corporation is as follows:

<u>Name of Corporation</u>	<u>Manner of Adoption</u>
Aero Oil Company	Board of Directors
Aero Realty, Inc.	Board of Directors
Aerol, Inc.	Board of Directors
Blue Ridge Oil Company	Board of Directors

The plan of merger was adopted by vote of the Board of Directors of each corporation which was a party to the plan pursuant to Section 902.1 of the Business Corporation Law, 15 P.S. § 1902.1, as amended.

6. The plan of merger is set forth in Exhibit A, attached hereto and made a part hereof.

IN TESTIMONY WHEREOF, each undersigned corporation has caused these Articles of Merger to be signed by a duly authorized officer and its corporate seal, duly attested by another such officer, to be hereunto affixed this 10th day of March, 1982.

Attest:

Cloyd F. Kaiser
Secretary

AERO OIL COMPANY

BY M.T. Washburn
President

Attest:

Cloyd F. Kaiser
Secretary

AERO REALTY, INC.

BY M.T. Washburn
President

Attest:

Cloyd F. Kaiser
Secretary

AEROL, INC.

BY M.T. Washburn
President

Attest:

Cloyd F. Kaiser
Secretary

BLUE RIDGE OIL COMPANY

BY M.T. Washburn
President

Directors: [faded]

W. E. E. [faded]

McJohnson

[faded]

[faded]

Vind G. Papp

M. T. Dashburn

[faded]

R. W. [faded]

Directors: [faded]

M. T. Dashburn

Edward L. Higginbotham

R. W. [faded]

Treasurers: [faded]

Vind G. Papp

Cloyd E. Kavin

Edward L. Higginbotham

M. T. Dashburn

[faded]

Directors: [faded]

M. T. Dashburn

Edward L. Higginbotham

Vind G. Papp

R. W. [faded]

PLAN OF MERGER

THIS AGREEMENT dated this 10th day of March, 1982, by and between AERO OIL COMPANY (hereinafter referred to as Aero), AERO REALTY, INC. (hereinafter referred to as Realty), AEROL, INC. (hereinafter referred to as Aerol), and BLUE RIDGE OIL COMPANY (hereinafter referred to as Blue Ridge), (the last three corporations sometimes collectively referred to as the Subsidiary Companies) and their respective Directors,

WITNESSETH:

WHEREAS, Aero is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office at New Oxford, Adams County, Pennsylvania; and

WHEREAS, Realty, Aerol and Blue Ridge are each corporations duly organized and existing under the laws of the Commonwealth of Pennsylvania, having their respective offices in New Oxford, Adams County, Pennsylvania; and

WHEREAS, as of the date hereof Aero has authority to issue 10,000 shares of 6% preferred stock having a par value of \$10.00 each, zero (0) shares of which are outstanding, and 5,000 shares of common stock having a par value of \$10.00 each, 4,962 shares of which are outstanding; and

WHEREAS, as of the date hereof Realty has an authorized capitalization of 2,000 shares, par value \$100.00 per share, 1,800 shares of which are outstanding, Aerol has an authorized capitalization of 15,000 shares, par value \$10.00 per share, 2,090 shares of which are outstanding, and Blue Ridge has an authorized capitalization of 12,500 shares, par value \$10.00 per share, 5,000 shares of which are outstanding; and

WHEREAS, all of the issued and outstanding shares of stock of each of the Subsidiary Companies is owned directly by Aero; and

WHEREAS, Aero and the Subsidiary Companies desire to merge into a single corporation and the respective Boards of Directors of Aero and the Subsidiary Companies have determined that it is advisable

that the Subsidiary Companies, and each of them, be merged into Aero, on the terms and conditions hereinafter set forth and in accordance with, and with effect provided by, provisions of law applicable to corporate mergers generally in the Commonwealth of Pennsylvania;

NOW, THEREFORE, in consideration of the above and of the mutual covenants, agreements, representations and warranties herein contained, the parties agree as follows:

1. On the effective date of this agreement there shall be merged into Aero the Subsidiary Companies, and all of their properties, real, personal and mixed, and all debts due on whatever accounts to any of them and other choses in action belonging to any of them shall thereby be taken or deemed to be transferred to and vested in Aero without further act or deed, and such transfer and vesting shall be in complete redemption of all outstanding capital stock of the Subsidiary Companies.

2. On and after the effective date of this agreement, Aero shall be responsible for all the liabilities and obligations of each of the Subsidiary Companies, but the liabilities of the Subsidiary Companies or of their shareholders, directors or officers shall not be affected, nor shall the rights of the creditors thereof or of any persons dealing with any of the Subsidiary Companies or any liens upon any of the property of the Subsidiary Companies be impaired by such merger and any claim existing or action or proceeding pending by or against any of the Subsidiary Companies may be prosecuted to judgment as if such merger had not taken place, or Aero may be proceeded against or substituted in its place.

Any taxes, bonus, penalty and public accounts of the Commonwealth of Pennsylvania claimed against any of the Subsidiary Companies, but not settled, assessed or determined prior to the effective date of the merger, shall be settled, assessed or determined against Aero, and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of Aero.

3. On and after the effective date of this agreement, all leases under which Aero is then operating any of the properties of any

of the Subsidiary Companies shall be deemed to be cancelled and determined by virtue of this agreement, and all debts and obligations, accrued or contingent, open account or otherwise, between Aero and any of the Subsidiary Companies shall be deemed to be cancelled or discharged by virtue of this agreement.

4. Aero is the corporation which is to survive the foregoing merger and no change is to be made by the merger in its Articles of Incorporation or in its state of incorporation. Aero will continue to exist, under its present name, as a corporation incorporated under the laws of the Commonwealth of Pennsylvania, and under its present Articles of Incorporation and its present By-Laws.

5. On the effective date of this agreement the separate existence of each of the Subsidiary Companies shall cease and their capital stock shall be cancelled, and no shares or other securities or obligations or cash of the surviving corporation shall be exchanged therefor.

6. The effective date of this agreement shall be 12:01 A.M., June 1, 1982, provided all action necessary for the approval of this agreement has been taken by the directors of Aero and of the Subsidiary Companies and that Articles of Merger have been filed prior to such time in accordance with the requirements of laws applicable to mergers of corporations generally in the Commonwealth of Pennsylvania.

7. At any time prior to the filing of the Articles of Merger with the Department of State, this Plan of Merger may be terminated by the board of directors of any of the corporations which are parties hereto.

8. Aero shall pay all expenses incident to carrying this agreement into effect.

9. For convenience of the parties and to facilitate filing of this agreement, any number of counterparts thereof may be executed, and each such counterpart shall be deemed an original instrument.

IN WITNESS WHEREOF, the corporations, parties hereto, have caused this agreement to be signed in their respective corporate names by their respective Presidents and attested by their respective Secretaries and their respective corporate seals to be hereunto affixed, and all of the Directors of each of said corporations have duly subscribed their names to this agreement, all as of the day and year first above written.

Attest:

Cloyd F. Kaiser
Secretary

AERO OIL COMPANY

BY M.T. Washburn
President

Attest:

Cloyd F. Kaiser
Secretary

AERO REALTY, INC.

BY M.T. Washburn
President

Attest:

Cloyd F. Kaiser
Secretary

AEROL, INC.

BY M.T. Washburn
President

Attest:

Cloyd F. Kaiser
Secretary

BLUE RIDGE OIL COMPANY

BY M.T. Washburn
President

Directors: AERO OIL COMPANY

N.E. [unclear]
Ed Johnson
A. H. [unclear]
Wm. [unclear]
Vin. G. Papp
M.T. Dashburn
R. W. Long

Directors: AEROL, INC.

M.T. Dashburn
Edward S. Higginbotham
R. W. Long

Directors: AERO REALTY, INC.

Vin. G. Papp
Clyde E. Kavin
M.T. Dashburn
Edward S. Higginbotham
R. W. Long

Directors: BLUE RIDGE OIL COMPANY

R. W. Long
Edward S. Higginbotham
Vin. G. Papp
M.T. Dashburn

GETTY PROPERTIES CORP.
(DELAWARE)

NAME CHANGE FROM
GETTY REALTY CORP.
(DELAWARE)

TO

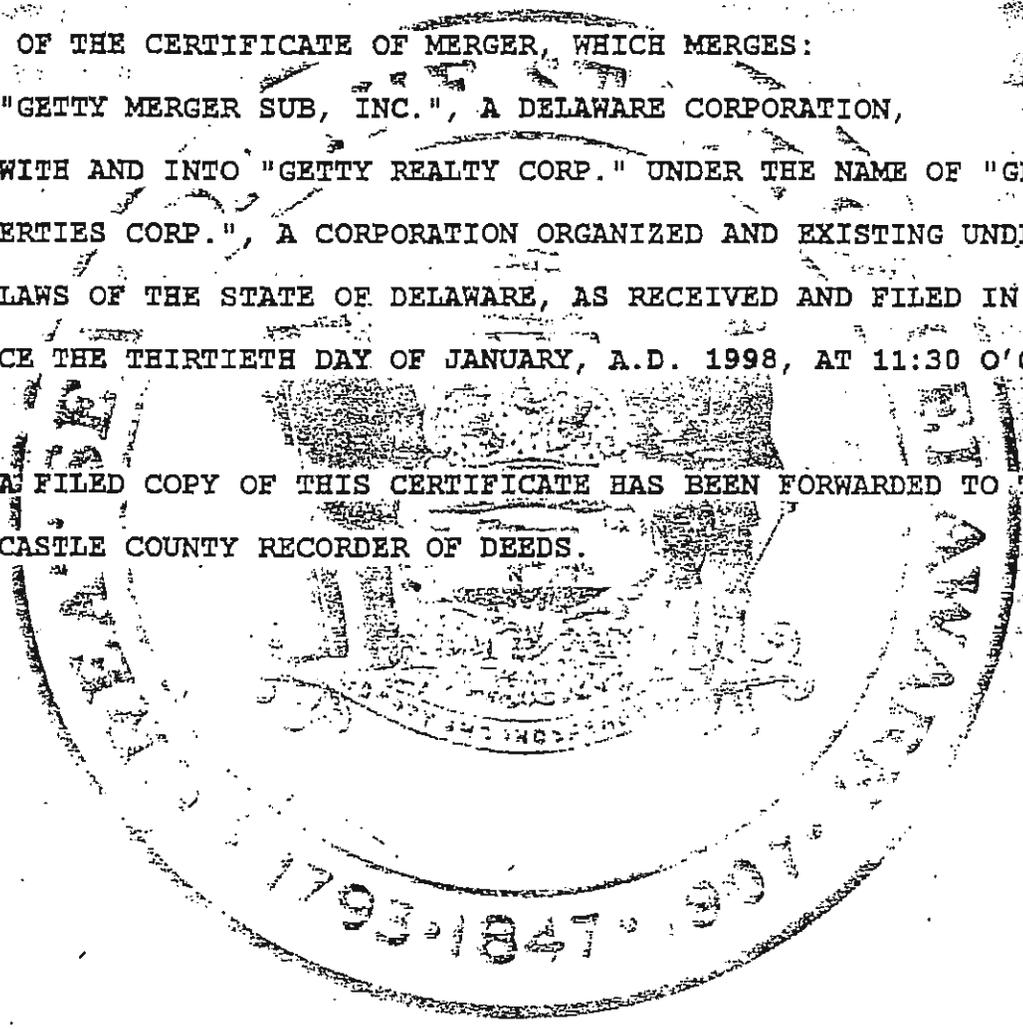
GETTY PROPERTIES CORP.
(DELAWARE)

JANUARY 10, 1998

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"GETTY MERGER SUB, INC.", A DELAWARE CORPORATION, WITH AND INTO "GETTY REALTY CORP." UNDER THE NAME OF "GETTY PROPERTIES CORP.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF JANUARY, A.D. 1998, AT 11:30 O' CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Edward J. Freel

Edward J. Freel, Secretary of State

0772019 8100M

AUTHENTICATION: 8894063

981038156

DATE: 01-30-98

CERTIFICATE OF MERGER

OF

GETTY MERGER SUB, INC.

WITH AND INTO

GETTY REALTY CORP.

**(Under Section 251 of the General
Corporation Law of the State of Delaware)**

Getty Realty Corp., a Delaware corporation, hereby certifies that:

1. The name and state of incorporation of each of the constituent corporations is as follows:
 - (a) Getty Merger Sub, Inc., a Delaware corporation ("Merger Sub");
and
 - (b) Getty Realty Corp., a Delaware corporation ("Getty").

2. The Agreement and Plan of Reorganization and Merger, as amended (the "Merger Agreement"), dated as of December 16, 1997, among Getty, Power Test Investors Limited Partnership, CLS General Partnership Corp. (for purposes of Section 1.10 (b) of the Merger Agreement only), Merger Sub, PTI Merger L.L.C. and Getty Realty Holding Corp., has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 251 of the General Corporation Law of the State of Delaware (the "DGCL") and, in the case of Merger Sub, written consent has been given in accordance with Section 228 of the DGCL.

3. The name of the surviving corporation is Getty Realty Corp. (the "Surviving Corporation").

4. The Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety to read as set forth on Annex A hereto. 

5. The executed Merger Agreement is on file at the principal place of business of the Surviving Corporation at 125 Jericho Turnpike, Jericho, New York 11753.

6. A copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

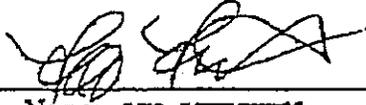
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RICHARDS LAYTON & FINGER

003

IN WITNESS WHEREOF, Getty Realty Corp. has caused this certificate to be signed as of the 28 day of January, 1998.

Getty Realty Corp.

By: 

Name: LEO LIEBOWITZ

Office: President

ANNEX A

CERTIFICATE OF INCORPORATION
OF
GETTY PROPERTIES CORP.
(formerly, Getty Realty Corp.)

1. The name of the corporation is:

GETTY PROPERTIES CORP. (the "Company")

2. The address of the Company's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the Company's registered agent at such address is The Corporation Trust Company.

3. The purposes to be conducted or promoted by the Company are:

To buy, sell, export, import distribute, produce, refine, store, transport, and otherwise deal in at wholesale or retail, or as a jobber in gasoline, kerosene, and other liquid fuels and petroleum products for use in motor vehicles and in the home.

To build, purchase, construct, lease, own, maintain, operate, acquire, sell and dispose of gasoline service stations, filling and distributing stations, stores, storage plants, service stations, bulk storage plants, repair shops, garages and other buildings and structures, and any other type of real estate or property as may be conducive to the business of the Company.

To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of,

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RICHARDS LAYTON & FINGER

005

or mortgage or pledge, all or any of the Company's property and assets, or any interest therein, wherever situated.

In general, to possess and exercise all the powers and privileges granted by the General Corporation Law of Delaware or by any other law of Delaware or by this certificate of incorporation together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Company, and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

The business and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the business and purposes specified in each of the foregoing clauses of this article shall be regarded as independent business and purposes.

4. The total number of shares of stock which the Company shall have authority to issue is one thousand (1,000) and the par value of each of such shares is One Cent (\$.01) amounting in the aggregate to Ten Dollars (\$10.00).

5. The name and mailing address of each incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
B. J. Consono	100 West Tenth Street Wilmington, Delaware 19899
W. J. Reif	100 West Tenth Street Wilmington, Delaware 19899
G. J. Coyle	100 West Tenth Street Wilmington, Delaware 19899

6. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the Company.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the Company.

To set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By a majority of the whole board, to designate one or more committees, each committee to consist of one or more of the directors of the Company. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The by-laws may provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such

provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Company, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Company, as the case may be, agree to any compromise or arrangement and to any reorganization of this Company as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Company, as the case may be, and also on this Company.

7. Meetings of stockholders may be held within or without the State of Delaware, as the by-laws may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the Company. Elections of directors need not be by written ballot unless the by-laws of the Company shall so provide.

8. The Company reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

9. The Company shall indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily

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RICHARDS LAYTON & FINGER

003

incurred by them in connection with the defense of any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of the Company, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any by-law, agreement, vote of stockholders, or otherwise.

10. No director of the Company shall be held personally liable to the Company or its stockholders for monetary damages of any kind for breach of fiduciary duty as a director, provided that the foregoing clause shall not eliminate or limit the liability of a director (1) for any breach of the director's duty of loyalty to the Company or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under section 174 of the Delaware General Corporation Law, or (4) for any transaction from which the director derived an improper personal benefit."

NAME CHANGE FROM
GETTY PETROLEUM CORP.
(DELAWARE)

TO

GETTY REALTY CORP.
(DELAWARE)

MARCH 27, 1997

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"GETTY REALTY CORP.", A DELAWARE CORPORATION,
WITH AND INTO "GETTY PETROLEUM CORP." UNDER THE NAME OF
"GETTY REALTY CORP.", A CORPORATION ORGANIZED AND EXISTING UNDER
THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS
OFFICE THE TWENTY-SEVENTH DAY OF MARCH, A.D. 1997, AT 1 O'CLOCK
P.M.



A handwritten signature in cursive script that reads "Edward J. Freel".

Edward J. Freel, Secretary of State

0772019 8100M

AUTHENTICATION:

8403255

971108036

DATE:

04-03-97

**CERTIFICATE OF OWNERSHIP AND MERGER
MERCING
GETTY REALTY CORP.
INTO
GETTY PETROLEUM CORP.
WITH SUBSEQUENT NAME CHANGE TO
GETTY REALTY CORP.
(PURSUANT TO SECTION 253 OF THE GENERAL
CORPORATION LAW OF DELAWARE)**

Getty Petroleum Corp., a Delaware corporation (the "Corporation"), does hereby certify:

FIRST: That the Corporation is incorporated pursuant to the General Corporation Law of the State of Delaware.

SECOND: That the Corporation owns all of the outstanding shares of each class of the capital stock of Getty Realty Corp., a Delaware corporation.

THIRD: That the Corporation, by the following resolutions of its Board of Directors, duly adopted on the 12th day of December, 1996, determined to merge into itself Getty Realty Corp. on the conditions set forth in such resolutions:

RESOLVED, that the Corporation merge into itself its subsidiary, Getty Realty Corp., and assume all of said subsidiary's liabilities and obligations;

FURTHER RESOLVED, that effective upon the merger of Getty Realty Corp. with and into this Corporation, this Corporation shall change its name to "Getty Realty Corp." and amend its Certificate of Incorporation so that Article 1 of such Certificate of Incorporation shall read as follows:

- "1. The name of the corporation is Getty Realty Corp.";

FURTHER RESOLVED, that the President and the Secretary of this Corporation be and they hereby are directed to make, execute and acknowledge a certificate of ownership and merger setting forth a copy of the resolutions to merge said Getty Realty Corp. into this Corporation, to assume said subsidiary's liabilities and obligations and to change the name of this Corporation to "Getty Realty Corp." and the date of adoption thereof and to file the same in the office of the Secretary of State of Delaware and a certified copy thereof in the Office of the Recorder of Deeds of New Castle County and to do all acts and things whatsoever, whether within or without the State of Delaware, that may be in any way necessary or proper to effect such merger.

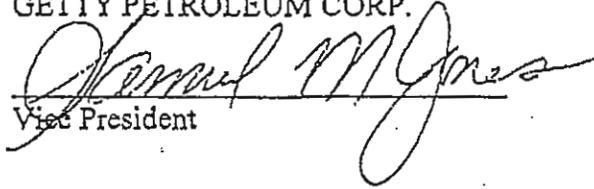
412 315 1578 P.03/03

FOURTH: That this Certificate of Ownership and Merger shall be effective on March 31, 1997.

IN WITNESS WHEREOF, said Getty Petroleum Corp. has caused its corporate seal to be affixed and this certificate to be signed by Samuel M. Jones, its Vice President, and attested by Randi Young Filip, its Assistant Secretary, this 20th day of March, 1997.

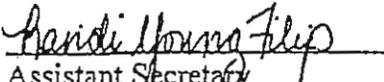
GETTY PETROLEUM CORP.

By:


Vice President

ATTEST:

By:


Assistant Secretary

ARTICLE XVI
Off-Street Parking and Loading

§ 164-111. General provisions and requirements.

- A. For the following uses of buildings hereinafter erected or increased from the size existing at the time of the adoption of this chapter, off-street parking facilities which are outside the public right-of-way shall be required as provided herein.
- B. Parking standards. Off-street parking facilities shall be provided for uses in zones, must not be more than 300 feet in distance from an entrance to said uses, shall accommodate normal parking requirements and shall meet the standards listed below.
- C. Parking facilities in Central Business Zone; benefit assessment charge and annual maintenance fee. As to all construction or uses, including residential uses, commenced in the Central Business Zone after the effective date of this section, to the extent that the Planning Director determines that the size, configuration or other physical characteristic of the site of the planned use makes it impossible for the user to meet the standards in this section, thereby creating a hardship, the Planning Director may, in the Planning Director's discretion, upon application from the user, allow a reduction in the number of spaces; provided, however, that the user shall pay the City a one-time benefit assessment charge and an annual maintenance fee for each space the user is not able to provide under the standards in this section as provided in the General Fee Ordinance.¹ **[Amended 2-27-1995 by Ord. No. 594; 4-14-1997 by Ord. No. 617; 9-24-2001 by Ord. No. 672; 7-12-2004 by Ord. No. 718; 1-28-2008 by Ord. No. 774; 11-24-2008 by Ord. No. 792]**

Parking Standards

Type of Use	(number of spaces)
Residential	
Single-family detached and semidetached	2 per dwelling unit, minimum of 9 x 18 feet in size per space
Single-family attached	3 per dwelling unit, minimum of 9 x 18 feet in size per space

1. Editor's Note: See Ch. A175, Fees, Art. I, General Fees.

Parking Standards

Type of Use

(number of spaces)

Multiple-family units	1 per efficiency unit; 1 1/2 per 1-bedroom unit; 2 for 2- or more-than-2-bedroom units
Multiple-family housing for older persons	1 1/2 per dwelling unit up to 2 bedrooms, 2 per dwelling unit with more than 2 bedrooms
Nonresidential	
Airparks, airports and fields requirements. Land uses incidental to air flights are subject to other parking standards contained in this chapter.	Subject to state and federal site
Animal hospitals, veterinary clinics and kennels	1 per employee, plus 1 per business vehicle, plus 1 for each 300 square feet of floor space used for hospital, clinic, office, storage or other purposes
Automobile service stations	2 per bay and 1 per employee shift
Barbershops and beauty shops	1 per employee, plus 2 per each chair
Bowling centers	4 per lane and 1 per employee
Churches, parish houses or other places of worship	1 for each 3 fixed seats, provided that the number of spaces required may be reduced by up to 50% if the place of worship is within 500 feet of any public parking lot or commercial parking lot where sufficient spaces are available, by permission of the owner(s) without charge, during the time of services to make up the additional spaces required

Parking Standards**Type of Use****(number of spaces)**

Commercial establishments devoted to retail sales, trade, merchandising or similar uses not otherwise specified herein	1 for each 250 square feet of floor area used for retail sales, trade or merchandising, and 1 for each 300 square feet of floor space used for office, storage or other purposes
Convents and monasteries	1 for each 250 square feet of floor space, plus 1 per institutional vehicle
Country clubs, private clubs, social clubs and fraternal organizations	1 per 4 persons of estimated facility capacity, plus 1 per employee and 1 per facility vehicle and piece of mobile equipment
Fire stations, rescue stations and ambulance services	1 per 1 1/2 employees on a major shift, plus 1 per facility vehicle, plus 1 per piece of mobile equipment, plus 1 for visitor's use per 5 employees on the maximum shift
Food stores, supermarkets and roadside stands	1 per 200 square feet of floor area devoted to customer service
Funeral homes and mortuaries	1 for each 100 square feet of floor area devoted to assembly room purposes, plus 1 per 2 employees, plus 1 for each vehicle used in connection with the business
Furniture and appliance stores and repair shops	1 per 500 square feet of floor area, plus 1 for each employee
Government buildings and public buildings	1 for each 250 square feet of floor area or 2 per office, whichever is greater
Home occupations	1 in addition to spaces devoted to use by the residents

Parking Standards**Type of Use****(number of spaces)**

Hospitals, nursing, care or retirement homes

1 for every 4 beds or 1 per 600 square feet of floor area, exclusive of basement area not devoted to patients, whichever is greater

Hotels, motels, lodging houses and boarding- (lodging) or rooming houses

1 for each rental room or suite. In addition, if a restaurant in connection with such use is open to the public, the off-street parking facilities for such restaurant shall be those required for a restaurant use.

Indoor shooting ranges

1 per employee and 2 per each shooting and 1 for each 250 square feet of floor area used for accessory retail sales

Manufacturing establishments not otherwise specified herein

1 per 1 1/2 employees on a major shift, plus 1 per company vehicle and piece of mobile equipment

Medical and dental offices and clinics

4 per doctor, plus 1 per employee or 1 for each 200 square feet of office space, whichever is greater

Nightclubs and taverns

1 per 4 seats or 1 per 75 square feet of floor area devoted to customer service, plus 1 per employee, whichever is greater

Offices: business, professional or financial

1 for each 250 square feet of floor area or 2 per office, whichever is greater

Radio and television studios

1 for each 250 square feet of floor area or 2 per office, whichever is greater

Recreation facilities and centers

1 per 4 persons of estimated facility capacity, plus 1 per employee and 1 per facility vehicle and piece of mobile equipment

Type of Use	Parking Standards (number of spaces)
Research and development establishments, including laboratories	1 per 1 1/2 employees based on the occupancy load, plus 1 per company vehicle
Restaurants and lunchrooms	1 per 4 seats, plus 1 per 2 employees
Schools	Subject to State Board of Education site requirements
Sport centers or arenas, auditoriums not associated with schools, theaters, private assembly halls and community meeting halls	1 per 3 seats or similar accommodations provided, plus 1 per 2 employees
Swimming pools, commercial	1 per 4 persons of estimated pool maximum capacity, plus 1 per employee
Swimming pools, community	1 per 7 persons of estimated pool maximum capacity, plus 1 per employee
Taxi stations	1 for every 3 taxis using the station
Truck and motor freight terminals	1 per motor vehicle to be serviced by the facility, plus 1 per employee. With the exception of parking spaces for employees, all motor vehicle spaces shall be of a size adequate for the type of vehicle serviced by the terminal.
Utility facilities, including telephone offices and service centers	1 per 1 1/2 employees on a major shift, plus 1 per company vehicle and piece of mobile equipment, plus 1 for visitors use per 25 employees on the maximum shift, or 1 per 1,000 square feet of gross floor area

Parking Standards

Type of Use

(number of spaces)

Warehouses, heavy equipment storage yards, lumber- and building materials yards and all other industrial uses	1 per 1 1/2 employees on a major shift, plus 1 per company vehicle and piece of mobile equipment, plus 1 for visitor's use per 25 employees on the maximum shift, or 1 per 1,000 square feet of gross floor area
Wholesale establishments	1 per 2 employees

- D. ²Parking facilities in Downtown Parking Area; benefit assessment charge and annual maintenance fee. As to all construction or uses, including residential uses, commenced in the Downtown Parking Area after the effective date of this section, to the extent that the Planning Director determines that the size, configuration or other physical characteristic of the site of the planned use makes it impossible for the user to meet the standards in this section, thereby creating a hardship, the Director may, in the Director's discretion, upon application from the user, allow a reduction in the number of spaces; provided, however, that the user shall pay the City a one-time benefit assessment charge of and an annual maintenance fee for each space the user is not able to provide under the standards in this section as provided in the General Fee Ordinance.³ Additionally, there is hereby granted a reduction in the number of required parking spaces of 25% for all construction or uses, commenced in the Downtown Parking Area after July 1, 2004. The Downtown Parking Area shall be designated on a map adopted by resolution of the Mayor and Common Council. **[Added 7-12-2004 by Ord. No. 718; amended 1-28-2008 by Ord. No. 774; 11-24-2008 by Ord. No. 792]**
- E. All off-street parking and loading facilities required by this article for any use shall be located on and entirely within the same record lot with that use, unless otherwise provided for in this article.
- F. Requirements for the provision of parking facilities with respect to two or more property uses of the same or different types may be satisfied by the permanent allocation of the requisite

2. Editor's Note: Former Subsections D, E and F were redesignated as Subsections E, F and G to accommodate the addition of a new Subsection D.
3. Editor's Note: See Ch. A175, Fees, Art. I, General Fees.

number of spaces for each use in a common parking facility, cooperatively established and operated. The number of spaces so designated may not be less than the sum of the individual requirements for each use, except as hereinafter provided, and all design requirements contained in this article must be met. A common parking facility so established must be located so that a major point of pedestrian access to such common facility is within a five-hundred-foot walking distance of the entrance to each use served thereby.

- G. Required off-street parking spaces may be reduced in area by providing designated parking spaces for bicycles, motorbikes or motorcycles, but in no event shall such a reduction in area be permitted on more than 5% of the total number of required spaces.

§ 164-112. Compliance required.

- A. No land shall be used or occupied, no structure shall be designed, erected, attached, used or occupied and no use shall be operated unless the parking and loading facilities herein required are provided in at least the amounts and in accordance with the design standards set forth in this article.
- B. No automobile off-street parking area shall be reduced in area or encroached upon by buildings, vehicle storage, loading or unloading or any other use where such reduction or encroachment will reduce the area below that required by this article.
- C. Parking facilities for one use shall not be considered as providing the required parking facilities for any other use, except as provided in this article.
- D. No parking area or loading space shall be used for the storage, sale, repair, dismantling or servicing of any vehicles, equipment, materials or supplies.
- E. For the purpose of this article, the number of employees for a use shall be computed on the basis of the maximum number of persons to be employed at any one time, other than at changes of shifts.
- F. All garage or other space allocated for parking of vehicles within buildings or in basements or open spaces on the roofs of buildings shall be considered part of the required off-street parking

facilities and may be included as such in computing the area requirements outlined in this article.

- G. Off-street parking and loading facilities for commercial or industrial uses that make it necessary for vehicles to back out directly into a public road are prohibited.
- H. All off-street parking and loading facilities required by this article for any use shall be established in accordance with all design standards and maintained throughout the operation of that use; any additional off-street parking and loading facilities required as a result of an expansion of or a change in any use shall be likewise established and maintained.
- I. In all residential zones, off-street parking of motor vehicles shall be limited to passenger cars, recreational vehicles and trucks not exceeding a maximum gross weight of 18,000 pounds, which are not truck tractors, trailers or truck-trailer combinations, as defined in the Transportation Article of the Annotated Code of Maryland.
- J. Parking facilities shall be provided for the physically handicapped and aged as specified in Article 41, § 257JK of the Annotated Code of Maryland, entitled "Building code making buildings usable by handicapped persons," or as that section may be hereinafter amended.⁴ Such parking facilities may be counted in computing the number of spaces required under this article.

§ 164-113. Location and landscaping.

Every off-street parking area, except where the public street is the approved drive aisle, for more than five vehicles shall be located at least five feet from any public walkway, 10 feet from any street or curb and five feet from every residential lot line. The edges of the parking area shall be curbed or buffered, and the space between the parking area and street or lot line shall be landscaped and maintained in a sightly condition. Where adjoining a street, such landscaping shall consist of grass and low shrubs or ornamental trees. Where adjoining a residential lot, it shall include a hedge of sufficient type and height, not less than 30 inches, to protect and screen the adjoining property. If an ornamental wall or fence is installed in lieu of such hedge and accomplishes the same purpose, then the five-foot strip may be reduced to three feet. In parking areas containing 12 or more parking spaces, the total area of said parking area shall be a minimum of 10% of landscaped islands. Said landscaped islands

4. Editor's Note: See now § 6-102 of Art. 83B of the Annotated Code of Maryland.

shall be planted with a minimum of one two-and-one-half-inch-caliper shade tree for each 350 square feet of such island.

§ 164-114. Maintenance and lighting.

- A. Any off-street parking area, including any commercial parking lot, for more than five vehicles shall be surfaced or kept treated in such a manner as may be necessary to prevent any dust or nuisance to the neighboring property or the general public and shall be so arranged and marked as to provide for orderly and safe loading or unloading and parking and storage of self-propelled vehicles.
- B. Adequate lighting shall be provided for all parking facilities used at night. Lighting of off-street parking facilities shall be installed and maintained in a manner not to reflect or cause glare into abutting or facing residential premises nor to cause reflection or glare which adversely affects safe vision of operators of vehicles moving on roads and highways.

§ 164-115. Design standards.

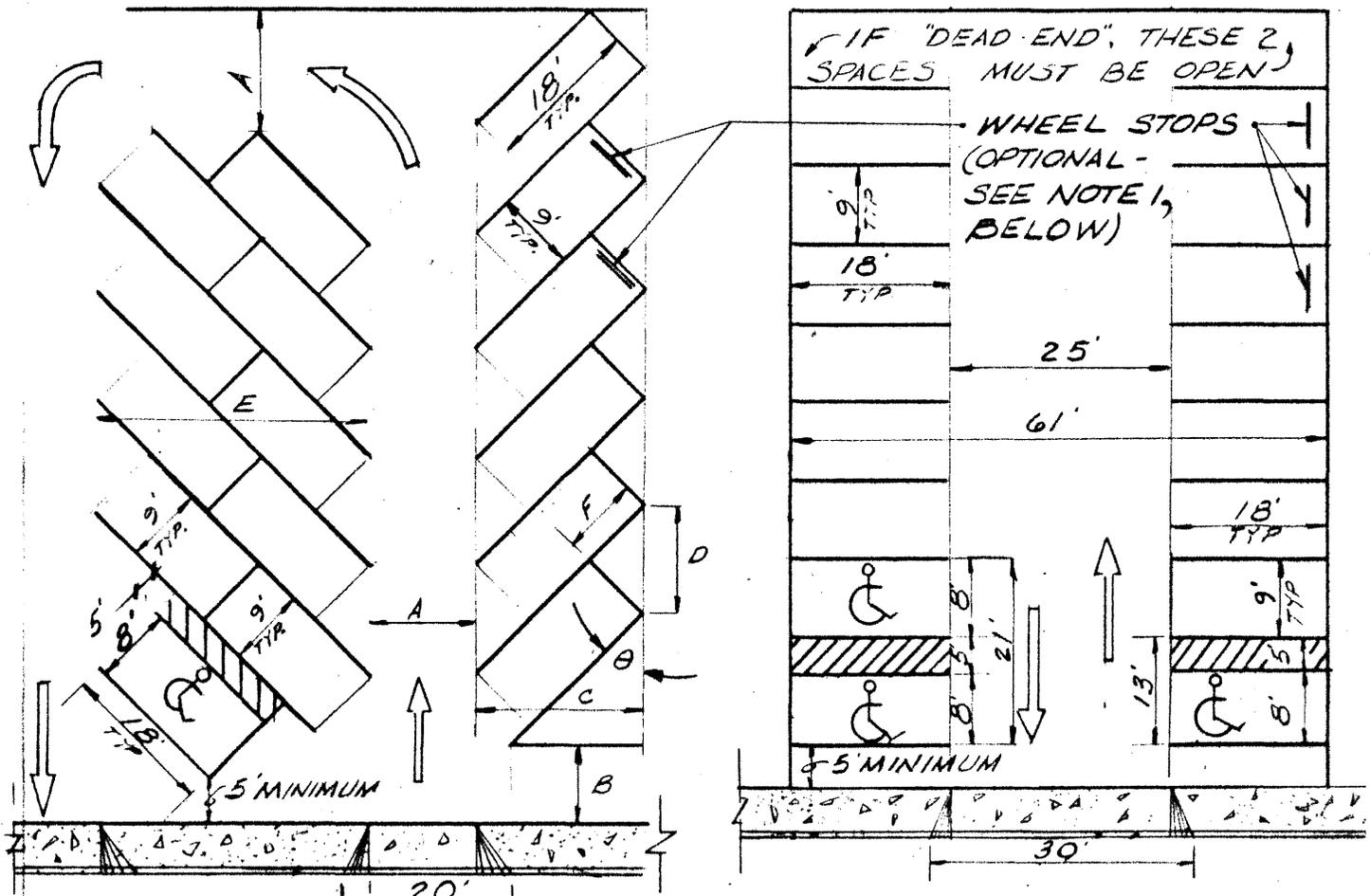
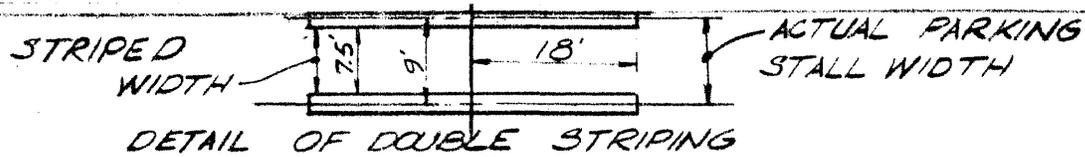
- A. Approval. Designs and plans for areas to be used for automobile off-street parking, including but not limited to the design of aisle widths, stall lengths and widths, turning radii, flow patterns and paving, shall be subject to approval by the Planning Director in accordance with the purposes and requirements set forth in this section and Article XXV of this chapter.
- B. Objectives of designs and plans. Said designs and plans shall accomplish the following objectives:
 - (1) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include but shall not be limited to the reasonable control of noise, glare or reflection from automobiles, automobile perimeter, landscaping, plantings, walls, fences or other natural features or improvements.
 - (2) The safety of pedestrians and motorists within a parking facility.
 - (3) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.
 - (4) The provision of appropriate lighting, if the parking is to be used after dark.

- C. Arrangement and marking. All off-street parking areas shall be arranged and marked so as to provide for orderly and safe loading, unloading, parking and storage of vehicles. All nonparallel parking spaces shall be striped to indicate parking areas. Standard parking spaces less than 10 feet in width shall be double-striped between each space to indicate the car width. Compact parking spaces shall be striped around their entire perimeter. Individual parking spaces shall be clearly defined, and directional arrows and traffic signs shall be provided as necessary for traffic control.
- D. Size of spaces.
- (1) Each standard-size parallel parking space shall have minimum dimensions of seven feet by 21 feet. A "parallel parking space" is defined as one in which the long side of the space parallels the travel lane.
 - (2) Each standard-size perpendicular or angled parking space shall be a rectangle having minimum dimensions of nine feet by 18 feet.
 - (3) The size, clearance, area and other dimensional requirements of off-street parking areas and parking places shall be determined by the type of parking arrangement in accordance with the parking chart and table stated below:
- E. Additionally, all off-street parking and loading areas shall be so graded, drained and paved or surfaced as to prevent damage to abutting properties or public streets and shall be approved by the Planning Department. **[Amended 1-28-2008 by Ord. No. 774]**
- F. Modification by Planning Director. The Planning Director may approve the use of compact parking spaces with minimum dimensions of eight feet by 16 feet due to extraordinary situations or conditions peculiar to a specific parcel of property. Any such compact parking spaces shall not exceed 30% of the total number of spaces. The Director may also approve changes in the dimensions of parking spaces in parking garages consistent with nationally recognized design standards for parking garages. No space in a parking garage shall have less than the minimum dimensions of eight feet by 16 feet. **[Amended 8-10-1998 by Ord. No. 629; 1-28-2008 by Ord. No. 774]**

§ 164-116. Off-street loading.

- A. Off-street loading and unloading spaces with appropriate and safe access from a street or alley shall be provided on each lot where it is deemed necessary by the Zoning Administrator to adequately serve the uses within the proposed structure.
- B. Where off-street loading spaces are provided cooperatively for two or more uses, all required off-street loading spaces shall be located on the same lot as the use served.
- C. No loading space or berth shall be located within 40 feet of the nearest point of intersection of the rights-of-way of two streets or roads.
- D. No loading space or berth shall be located in a required front yard.
- E. No loading area shall be located so as to interfere with the circulation of vehicles in any off-street parking area.

[\[See enlarged parking layout on following page\]](#)



20' VARIES IN ACCORDANCE WITH DIMENSION "A"

NOTES:

- 1) USE OF VEHICLE LOCATION DEVICES SHALL NOT DECREASE THE SPACE OR DEPTH DIMENSION.
- 2) FOR SPECIFIC HANDICAPPED ACCESS REQUIREMENTS, SEE ART. 41, SECT. 257 JK OF THE ANNOTATED CODE OF MARYLAND.

θ°	A	B	C	D	E	F	"N" - NO. OF SPACES*	
15	(NOT PRACTICAL, DUE TO EXCESSIVE REQUIRED LENGTH)							
30	12'	9'	16.8	18.0	25.8	15.6	$N = \frac{L-9}{15.6}$	
45	12'	9'	19.1	12.7	31.8	9.0	$N = \frac{L-9}{12.7}$	
60	17'	12'	20.1	10.4	35.7	5.2	$N = \frac{L-12}{10.4}$	
90	(SEE 2-WAY TRAFFIC DETAIL, ABOVE)							$N = \frac{L-5}{9}$ (-1, IF DEADEND)

* L = LENGTH AVAILABLE BEHIND WALK

IN THE MATTER OF:

*

BOARD OF ZONING APPEALS

Applicant: Cellco Partnership

*

CITY OF WESTMINSTER, MD

(d/b/a Verizon Wireless)

*

**Property: Lot 5B-Independence Way
Westminster, MD 21157**

*

Case No. 15-01

*

Application for Special Exception

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* * * * *

**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 15-01 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals" or the "Board") on January 30, 2015, by Cellco Partnership, d/b/a Verizon Wireless (the "Applicant"), lessee of the property located at Lot 5B Independence Way (street address pending), Westminster, Maryland 21157 (hereinafter referred to as the "Property"), for a special exception pursuant to §164-66.1, 164-170A and §164-139.1 of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for a telecommunications facility in the PI-Planned Industrial Zone; and

WHEREAS, the Applicant's request for a special exception was made to allow the construction of a 150' monopole within a 50' by 50' fenced compound and associated support structures; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on November 3, 2015, in Town Hall, City of Westminster, Maryland, to consider Application No. 15-01. At the conclusion of the November 3, 2015 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 15-01 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 15-01, that a special exception to allow the construction of a 150' high monopole telecommunications facility and associated structures on the Property is hereby **GRANTED, subject to the following condition set forth below:**

1. Applicant shall install and maintain a landscaping buffer to reach a mature height of at least eight feet around the perimeter of the proposed chain link fence that will surround the proposed monopole and equipment platform and within the Applicant's leased premises, except for the area on the western side where the road and gate are present.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The Application for special exception (Exhibit 1) was originally filed on January 30, 2015. At the time the property subject to the request was a 15.48 acre lot with an address of 1231 Independence Way and was owned by Conewago Contractors, Inc.
2. A hearing was scheduled for April 28, 2015. On April 16, 2015 the Applicant requested a postponement of the hearing so it could pursue the relocation of the proposed monopole to accommodate third party concerns. On April 17, 2015 the Chair granted the postponement.
3. Subsequent to the postponed April 28th hearing and prior to the November 3, 2015 hearing, the property identified as 1231 Independence Way was subdivided by the owner, Conewago

Contractors, Inc. into two lots (See Exhibit 12). The northern portion of the property is identified as a Lot 4B (consisting of 5.958 acres) and the southern portion is identified as Lot 5B (consisting of 9.529 acres). The Application was accepted as amended to apply only to Lot 5B, which is located along Independence Way (a public street) but for which a street address has yet to be assigned. Lot 4B was transferred to a third party and retains the street address of 1231 Independence Way. Except for explicit references to Lot 4B or a specific portion of the original property not located on Lot 5B, the Board finds that the references to 1231 Independence Way in many (if not most) of the exhibits shall be construed to refer to the subject Property, Lot 5B.

4. In anticipation of the November 3, 2015 hearing, the Property was posted with a sign notice of hearing on October 16, 2015, notice was published in the Carroll County Times newspaper on October 12th and October 27, 2015, and certified letters were mailed to adjacent property owners on October 5, 2015. All of the aforementioned notices made reference to 1231 Independence Way as the property address.
5. The Board finds that the identification of the Property as Lot 5B-Independence Way, notwithstanding the absence of an assigned street address, is sufficient to describe the Property subject to the special exception request.
6. The Board finds that the inclusion of the address 1231 Independence Way in the notices of hearing, despite Lot 4B retaining that specific street address, was sufficient to give notice as required under §164-166. Anyone receiving or reading the notices could identify the Property using the old address, based upon a review of the application. The use of the 1231 Independence Way street address and the fact that it applied technically only to Lot 4B would not, at the time of the notices, have been easily discoverable by the public. The

Property was sufficiently identified for the purpose of giving notice as to the proposed special exception use, location, and most importantly, the date and time of the hearing (at which the details of the subject Property could have been clearly identified).

7. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.
8. No persons testified or offered evidence at the hearing against the special exception request. Other than the Application for a special exception and a pre-hearing statement submitted by the Applicant, no other pre-hearing submissions were accepted into the record.

Substantive Findings:

9. The Applicant is the lessee of a 100' by 100' area, located in the southeast corner of the Property. The Applicant has the consent of the owner, Conewago Contractors, Inc. to seek the special exception.
10. The Property is bounded on the north by Lot 4B, upon which there is an existing industrial building and use (a thermal battery manufacturer). To the immediate west of the Property is Independence Way, a 60' public right of way. To the immediate south of the Property is undeveloped property owned by the Industrial Development Authority of Carroll County, Inc. To the immediate east of the Property where the proposed monopole will be located is the Carroll County Department of Social Services. As shown on Sheet Z-2 of Exhibit 12, to the east of the proposed monopole, beginning just outside the property line, the land slopes downward at a rate of approximately 15 feet in height over a distance of 40 to 45 feet.
11. The Property is located in the PI-Planned Industrial Zone of the City of Westminster.
12. The Property is currently undeveloped.

13. The Applicant proposes to construct a 150' high monopole within a 50' by 50' fenced compound on the leased premises of the Property. The proposed fence is to be an 8' high chain linked fence with barbed wire extending from the top and an access gate on the western side of the fenced enclosure. Within the fenced area, the Applicant proposes to construct a cable bridge with two GPS antennas and a 10' by 16' support platform with a canopy, which will reach a height of 11'7", containing support equipment (a generator, battery, and Charles cabinet). The Applicant proposes to construct a gravel access road 10' wide from Independence Way on the western border of the Property to the fenced compound (at the gate) with a parking spot/turnaround location. The proposed area of disturbance is 11,995 square feet.
14. The monopole is to be located at: Grid N: 707380.708; Grid E: 1313910.676; Latitude 39°36'32.175"; Longitude -76°59'39.847". The proposed monopole would be located 113'6" from the shared property line with the Carroll County Department of Social Services to the east and 90' from the shared property line with the Industrial Development Authority of Carroll County, Inc. to the south (a side yard). The proposed monopole would be located 478.7' from the western property line (the front yard) and 630.5' from the northern property (a side yard).
15. The neighborhood is typified by a cluster of structures serving light industrial uses from Old Bachman's Valley Road to the south to Pleasant Valley Road to the north, within the PI-Planned Development Zone. The airport and associated development, along with business park development exists to the west. The Property is roughly in the center of this pattern of development.

16. Pursuant to §164-66.1, a telecommunication facility is a special exception use in the PI-Planned Industrial Zone. A telecommunications facility is defined in §164-3A as:

A facility, excluding a satellite television dish antenna, established for the purpose of providing wireless voice, data, and image transmission within a designated area. Telecommunications facilities must not be staffed. Telecommunications facilities consist of one or more antennas attached to a support structure and related equipment. Antennas are limited to the following types and dimensions: omnidirectional (whip) antennas not exceeding 15 feet in height and three inches in diameter; directional or panel antennas not exceeding eight feet in height and two feet in width. An antenna may be mounted to a building, a building rooftop or a freestanding monopole in accordance with §164.139.1. Equipment may be located within a building, an equipment cabinet or an equipment room within a building.”

17. The Applicant’s proposal meets the definition of a telecommunications facility, as it is established for the purpose of wireless, voice, data and image transmission within a designated area, will not be staffed, and will consist of one or more conforming antenna attached to the monopole.

18. To qualify for a special exception for a telecommunications facility, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for all special exceptions in §164-170 and the specific requirements for telecommunications facilities in §164-139.1 of the zoning ordinance.

19. §164-170A requires a finding that:

“1.The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(b) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”
§164-170A.

20. Pursuant to §164-65, the purpose of the P-I Planned Industrial Zone is “...to provide a parklike setting for a community of industries wishing to mutually maintain aesthetically pleasing appearances and operations having no nuisance factors as a means of protecting investments within the zone and reducing the impact of industrial uses on surrounding zones.” There was no evidence that the proposed telecommunications facility will create a nuisance. There was substantial evidence that the communications services (importantly, the coverage area of those services) are necessary and desirable to support the investments within the zone. Letters of support for the special exception from the adjacent property owner to the north (Advanced Thermal Batteries, Inc.) and the property owner to the south (Industrial Development Authority of Carroll County) were offered into evidence (Exhibits 9 and 10). In addition, Albert White of Advanced Thermal Batteries, Inc. testified that he was present to confirm the location of the proposed telecommunications facility and appeared satisfied with the plans. One goal of the 2009 Comprehensive Plan (F6) is to “[e]ncourage the provision of state-of-the-art technology and communication facilities to deliver effective and innovative solutions that meet business, resident and government needs.” The Applicant provided photo simulations (using a balloon locator) of the proposed monopole (See Exhibit 13) which were helpful to demonstrating the aesthetic impact. The proposed monopole, while being viewable from multiple properties, is neither more aesthetically pleasing or displeasing than those uses typical of the neighborhood and within the PI-Planned Industrial Zone and is

compatible with surrounding land uses. Therefore, the Board finds that the Applicant's proposed telecommunications facility will not adversely affect the general plan for the physical development of the PI-Planned Industrial District.

21. The Board evaluated issues relating to the impact of the proposed telecommunications facility on the health and safety of the residents or workers in the area, including that the proposed telecommunications facility will be located near the Carroll County Regional Airport, its proximity to schools, residences and a local day care center, the proximity to the Department of Social Services on an adjacent property, and electromagnetic field effects. The facility will include a generator that will not create significant noise, as it is rated to run at 65 decibels. The engineer testified that at this level, the generator will be heard no farther than approximately 21 feet away, which keeps that noise within the boundaries of the Property. A NEPA Environmental Assessment was conducted by Dynamic Environmental Associates, Inc., finding that no NEPA issues were identified as a result of the work to construct the telecommunications facility and that no further assessment was recommended (See Exhibit 6).

22. The Applicant provided a "Determination of No Hazard to Air Navigation" (See Exhibit 5) from the Federal Aviation Administration, identifying that agency's finding that they conducted an aeronautical study under the provisions of 49 U.S.C. 44718 and Title 14 of the Code of Federal Regulations of the proposed monopole. The Federal Aviation Administration found that the monopole does not exceed obstruction standards and would not be a hazard to proximity to airport. The Board accepts this finding of no hazard.

23. The proposed telecommunications facility will be approximately .84 miles from the closest school (North Carroll H.S.) and 1.4 miles from Hope Chapel and therefore presents no risk of

hazard to local schools. There is a Celebree Learning Center (daycare) northeast of the Property, across Tech Court (See Exhibit 8), that is a sufficient distance from the proposed monopole such that it will not impose any hazards to that daycare facility. The testimony was that, as shown on Exhibit 8, there were no residences within a ¼ mile of the proposed telecommunications facility. The facility will be closed to public access with a protective barb-wire fence.

24. The proposed monopole will be 113.6' from the property line adjoining the Department of Social Services (to the immediate east of the Property). There was a concern raised that at 155' in height, the proposed monopole could potentially strike the DSS building were it to fall in its direction. There was testimony that this was a very unlikely circumstance because of the general infrequency of such an occurrence and because the safety grounding prevents the entire monopole from falling in any direction. The monopole will be designed according to the IBC code, including the TIA 222G Code for telecommunications towers. It is typical for the monopole to be built of three pieces, with slip joints overlapping from 5 to 6' in distance. The foundation will be approximately 30' into the ground. The testimony of the engineer Marc A. Mezzulo, P.E. (accepted by the Board as an expert) was that the more likely result is a monopole breaking off in the middle, which would have it land well short of the property line and not impact the DSS building.

25. There was testimony by Paul Dugan, P.E., (accepted by the Board as an expert) that there would be no adverse effects of electromagnetic interference or harm to others and that the level of electromagnetic effect is 1,000 times less than that required by the F.C.C. standard. The level of electromagnetic effect on adjacent properties would be less than those produced by fluorescent lights. In addition, the monopole was moved from its originally proposed

location to the southeast corner of the Property, to reduce the potential for any interference to the thermal battery operations of Advanced Thermal Batteries, Inc. to the north (See Exhibit 9). The evidence was that there would be no significant electromagnetic interference or effect on the operations and equipment of Advanced Thermal Batteries, Inc.

26. Therefore, incorporating by reference findings 21 through 25, as well as finding 48, the Board finds that the proposed telecommunications facility will not adversely impact the health and safety of the residents or workers in the area.
27. There was no evidence that the proposed telecommunication facility would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not. The Director's staff report identified no concerns, noting that subsequent stormwater management review will be required as the limit of disturbance will be 11,995 square feet (exceeding the 5,000 square feet threshold), which will be reviewed by the Planning & Zoning Commission during site plan review. This will ensure that the relevant infrastructure will not be overburdened. Access to the Property will be from Independence Way. Because the telecommunications facility will not be regularly staffed, but instead visited at a rate of one to two times a month, there will be no significant traffic or other burden to the roads in the neighborhood.
28. The Board finds that there was no evidence that the proposed telecommunication facility would be detrimental to the use or development of adjacent properties or the general neighborhood. The evidence demonstrated that the proposed telecommunication facility will expand cell phone and data coverage in the area where such coverage is currently substandard, which will facilitate the use and development of adjacent and neighborhood properties. The Board finds that the proposed telecommunication facility is consistent with

the neighborhood and the industrial development pattern in the PI-Planned Industrial Zone and will not change the character of the general neighborhood, considering the service required, at the time of the application, the population, density, character and number of similar uses.

29. In addition to the general requirements applicable to all special exceptions, to qualify for a special exception for a telecommunications facility the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the specific requirements for telecommunications facilities in §164-139.1 of the zoning ordinance. Each requirement will be separately set forth herein, followed by the Board's finding.

30. §164-139.1A(1) provides:

(1) An antenna and a related unmanned equipment building or cabinet may be installed on privately owned land on a rooftop of buildings which are at least 30 feet in height. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one-family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building, provided that it and all other roof structures do not occupy more than 25% of the roof area.

The Board finds the antenna and related unmanned facilities are not proposed for location on a building and thus the requirement of (1) above is satisfied or otherwise inapplicable.

31. §164-139.1A(2) provides:

(2) Telecommunications antennas may be attached to a freestanding monopole on privately owned land. A freestanding monopole, including antenna structure for a telecommunications facility, is permitted up to 199 feet in height with a setback as provided in Subsection A(10) hereof.

The Board finds that the free standing monopole is proposed to be 150' in height, meeting the requirement that it be no higher than 199 feet in height and that it will be situated on private land. The Board adopts and incorporates herein finding 39 with respect to the setback requirements of A(10), which are satisfied.

32. §164-139.1A(3) provides:

(3) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable setback standards of the zone in which the property is classified.

The Board finds that the proposed telecommunication facility will include an unmanned structure. Because it does not have a roof, it does not meet the definition of a building under the zoning ordinance. (See §164-3A, "Building"). The structure will have cabinets that will be in a 10'x 16' enclosure (160 square feet), thus meeting the 560 square feet requirement. The structure will be 11'7" high and thus will not exceed 12' in height. The structures will be situated on private land. The Board adopts and incorporates herein finding 39 with respect to the setback requirements of A(10), which are satisfied. The setbacks required by the PI-Planned Industrial Zone are found in §164-69, which refers to §§164-55 (for buildings), 164-57 (for landscaping) and 164-58 (for special exceptions). As noted earlier, the support structures are not buildings under the zoning ordinance. The landscaping requirements of §164-57 only apply when the Property is adjacent to residential districts or the development is next to an external right of way. Section 164-58 applies to all special exceptions except those listed in §164-54, and telecommunications facilities subject to the requirements of §164.139.1 are included in that list in §164-54H. Therefore, there are no setback requirements applicable to a telecommunications facility in a PI-Planned Industrial Zone that are in addition to, or otherwise alter, those required in §164.139.1.

33. §164-139.1A(4) provides:

(4) All antennas shall be located and designed, including materials, color and texture, so as to minimize visual impact on surrounding properties and as seen from the public streets.

The Applicant submitted detailed diagrams of the antennas (See Exhibit 12) and a series of photographs simulating the appearance of the monopole and attached antennas (See Exhibit 13). The Board finds that the antennas are located and designed in a manner to minimize, to the extent possible, the visual impact on surrounding properties and as seen from the public streets. There was no evidence of negative visual impacts over and above those inherently associated with the special exception use of a 150' monopole and antennas. Condition 1, requiring a landscaping buffer, will help minimize the visual impact of the support structures located on the ground.

34. §164-139.1A(5) provides:

(5) No signs are permitted in connection with any telecommunications facility.

The Board finds that no signs are proposed in connection with, or on, the telecommunications facility, thus the requirement of (5) above is satisfied or otherwise inapplicable.

35. §164-139.1A(6) provides:

(6) No lights or other illumination devices are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration or the City. Any security lighting must be downshielded to prevent light pollution on adjoining properties.

The Board finds that no lights or illumination devices are proposed in connection with, or on, the telecommunications facility, thus the requirement of (6) above is satisfied or otherwise inapplicable. The Board finds that the Federal Aviation Administration did not require marking and lighting for aviation safety in its June 1, 2015 Determination of No Hazard to Air Navigation (see Exhibit 5). The Director did not identify any required lighting on behalf of the City of Westminster.

36. §164-139.1A(7) provides:

(7) All monopoles erected as part of a telecommunications facility must maintain or accommodate at least three telecommunications carriers; provided, however, that a monopole or other support structure designed or engineered to accommodate fewer than three telecommunications carriers may be approved by the Board as provided in § 164-139.1.B(8).

The Board finds that the proposed telecommunication facility, including the monopole, is designed to accommodate at least three telecommunications carriers. The Applicant's proposal is designed to initially install the required equipment for Verizon, but at least two other carriers can be added.

37. §164-139.1A(8) provides:

(8) No more than one monopole is permitted on a lot or parcel of land, and no two monopoles may be located within 1,000 feet of each other.

The Board finds that no other monopole exists or is proposed on the Property and that there are no other monopoles within 1,000 feet of the monopole proposed by the Applicant.

38. §164-139.1A(9) provides:

(9) Every freestanding monopole or support structure, and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of the owner of the facility when the telecommunications facility is no longer in use by any telecommunications carriers.

The Board finds that the Applicant acknowledged the requirement of §164-139.1A(9) and affirmed that if the proposed telecommunication facility is no longer in use by any telecommunications carrier, it must be removed from the Property.

39. §164-139.1A(10) provides:

(10) A monopole, tower or other support structure must be located at a distance of 1/2 foot from the property line of adjacent nonresidentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

The Board finds that the proposed monopole and support structures will exist on a Property that is surrounded by properties in the PI-Planned Industrial District except on its eastern boundary, which is adjacent to properties that are in the IR-Restricted Industrial Zone. Therefore, all adjacent properties are in nonresidentially zoned districts so the setback required in subsection 10 is the ½ foot for every foot of the height of the monopole. The proposed monopole being 150' high, the setback required from all the properties is 75 feet. The closest property line to the monopole is the southern property line, which is 90' from the proposed monopole. Therefore, the Board finds the setback requirement of subsection (10) has been met.

40. §164-139.1B(1) provides:

(1) The application complies with all of the standards contained in **§164-139A.1**.

The Board finds that this requirement has been met and the Board adopts and incorporates by reference findings 30 through 39.

41. §164-139.1B(2) provides:

(2) The location selected is necessary for the public convenience and service.

The evidence was that the area to be served by the proposed telecommunications facility (shown on Exhibit 15 with its half mile and one mile scope of service) is currently underserved, with weak signals that may cause dropped calls and because 4G service requires higher level of signals, insufficient data service. The proposed facility (identified on Exhibit 3 as Littleton Pike) is within Verizon's 'areas of need', which are areas identified by Verizon's engineers as currently providing substandard service. Exhibit 16 demonstrated the impact of elevations and showed weak signal strength in the areas to be served by the

proposed telecommunications facility and how they would be resolved by the proposed facility. Board finds that the location is necessary for the public convenience and service.

42. §164-139.1B(3) provides:

(3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.

The Board finds that no other monopole exists or is proposed on the Property and that there are no other monopoles within 1,000 feet of the monopole proposed by the Applicant. No other monopoles, towers or similar structures were identified in the neighborhood or area of the proposed telecommunications facility.

43. §164-139.1B(4) provides:

(4) The location selected for a monopole is more than 300 feet from either the nearest boundary of an historic district or more than 300 feet from the nearest boundary of the environmental setting of an historic resource that is not within an historic district.

The Board finds that the proposed monopole exists is more than 300 feet from the boundary of any historic district (see Zoning Map). No historic resources within 300 feet were identified (See Exhibit 7).

44. §164-139.1B(5) provides:

(5) The location selected for a monopole is suitable for the collocation of at least three telecommunications antennas and related unmanned cabinets or equipment buildings, and the facility is designed to accommodate at least three antennas. The holder of a special exception may not refuse to permit the collocation of two additional antennas and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such collocation without just cause may result in revocation of the special exception.

The Board finds that the telecommunications facility has been designed to be suitable for the collocation of at least three telecommunications antennas and related unmanned cabinets or equipment.

45. §164-139.1B(6) provides:

(6) The Board must further find that any monopole, tower, support structure, equipment building or cabinet is located in conformity to the applicable setback standards of the zone and those provided in **§164-139.1A(10)**.

The Board finds that setback standards of the zone and those provided in §164-139.1A(10) have been met as the monopole will be farther than 75' from any property line and the Board hereby adopts and incorporates herein findings 32 and 39.

46. §164-139.1B(7) provides:

(7) The Board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures, does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10%. The Board must also find that the structure minimizes visual impact on surrounding properties and as seen from the public street.

The Board finds that the telecommunications facility is not proposed on a building. The structure minimizes visual impact on surrounding properties and as seen from the public street and the condition of landscaping will assist with that visual minimization (with respect to the ground-based structures). The Board adopts and incorporates herein finding 33.

47. §164-139.1B(8) provides:

(8) The Board must also find that a freestanding monopole or other support structure is proposed to hold no fewer than three telecommunications carriers. The Board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or the applicant establishes that collocation on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

The Board finds that monopole is designed to support up to three telecommunications facility, though only the Applicant's service is proposed at this time. The Board finds that no

other existing telecommunications facilities exist which would provide the necessary service to be provided in the same service area by the Applicant's proposed telecommunications facility (See Exhibit 15). The approval of the Applicant's proposed monopole will not lead to an over concentration of similar facilities in the surrounding area.

48. §164-139.1B(9) provides:

(9) The Board must find that the operation of the proposed telecommunications facility will not interfere with public safety telecommunicators. Any application for a special exception shall be accompanied by an intermodulation study which provides a technical evaluation of all proposed transmissions and indicates all potential interference problems. Prior to the introduction of any new service, the owner/operator shall provide the City at least 10 calendar days' notice in advance of such service and allow the City to monitor interference levels during the testing process.

The Applicant provided an intermodulation study (See Exhibit 17) conducted by Paul E. Dugan to address potential interference problems. The Board accepted Mr. Dugan, a professional engineer, as an expert. Mr. Dugan testified at the hearing. The Board finds that the study and Mr. Dugan's testimony demonstrates that the proposed telecommunications facility will not cause interference with the City of Westminster's public communications system mobile receivers. The Board finds that future collocations of service providers will also result in no expectation of interference. The Applicant remains bound to give notice 10 calendar days in advance of service as required by §164-139.1B(9).

49. §164-139.1B(10) provides:

(10) An applicant for a special exception for a telecommunications facility shall provide with the application a report from a qualified and licensed professional engineer which describes the tower, monopole or support structure height and design, including cross sections and elevations; documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas; describes the capacity of the tower or monopole, including the number and type of antennas that can be accommodated; documents what steps the applicant will take to avoid interference with established public safety telecommunications; includes an engineer's stamp and

registration number; and includes other information necessary to evaluate the request.

The Applicant provided schematic diagrams (See Exhibit 12) that describes the monopole, and technical descriptions of the support structures required by §164-139.1B(10) and along with the intermodulation study, the Board finds that the Applicant has met the requirement of §164-139.1B(10).

50. §164-139.1B(11) provides:

(11) Prior to granting any requested special exception for a telecommunications facility, the Board may require a visual analysis demonstration for any proposed monopole, tower or support structure.

The Applicant provided a visual analysis demonstration for the proposed monopole (See Exhibit 13), showing the simulated visual appearance of the monopole from eight different locations within the area.

51. §164-139.1B(12) provides:

(12) After notice and hearing, the Board may revoke the special exception for any telecommunications facility which has not been in use for 12 consecutive months, and the owner of the facility shall remove it at the owner's cost within 90 days after revocation of the special exception by the Board.

The Board finds that the Applicant acknowledged the requirement of §164-139.1B(12) and affirmed that if the proposed telecommunication facility is no longer in use by any telecommunications carrier, it must be removed from the Property.

52. Therefore, based upon the above findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception.

IT IS SO ORDERED.

(Certification on following page)

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on November 3, 2015. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 23rd day of November, 2015. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland



Ed Cramer, Chairman

IN THE MATTER OF:

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BOARD OF ZONING APPEALS

Applicant: Sheetz, Inc.

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CITY OF WESTMINSTER, MD

**Property: 1023 Baltimore Blvd.
Westminster, MD 21157**

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Case No. 16-02

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Application for Special Exception

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**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 16-02 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the “Board of Appeals” or the "Board") on January 27, 2016, by Sheetz, Inc. (the “Applicant”), lessee of the eastern portion of property located at 1023 Baltimore Blvd., Westminster, Maryland 21157, the parcel being identified as Carroll County Tax Map 46, Parcel 307, (hereinafter referred to as the “Property”), for a special exception pursuant to §164-42S and F, §164-149 and §164-170A of the Zoning Ordinance of City of Westminster, Maryland (the “Zoning Ordinance”) for an automobile service station and automobile car wash in the B Business Zone; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on March 1, 2016, in Town Hall, City of Westminster, Maryland, to consider Application No. 16-02. At the conclusion of the March 1, 2016 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 16-02 and all those who desired to be heard were heard and their testimony recorded; and

WHEREAS, at the public hearing the Applicant withdrew the portion of its application requesting a special exception to allow an automobile car wash, and proceeded only with the request for a special exception for an automobile service station; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 16-02, that a special exception to allow the use of the Property for an automobile service station is hereby **GRANTED, subject to the following two conditions set forth below:**

1. The Applicant is bound by the Board's stated approval condition that the Applicant has met all the conditions for granting a special exception by a preponderance of the testimony and evidence of record and shall comply with any additional conditions, restrictions or requirements included by the Planning & Zoning Commission during its site plan review; and

2. The Applicant shall establish that its proposed use and development plan shall be consistent with and meet the requirements of §§164-149B(1), (2), (3), (4), (5), and (6), to the satisfaction of the Planning and Zoning Commission during its site plan review and approval.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The application for special exception was filed on January 27, 2016.
2. In anticipation of the March 1, 2016 hearing, the Property was posted with a sign notice of hearing on February 12, 2016, notice was published in the Carroll County Times newspaper on February 7th and February 21, 2016, a notice of hearing was sent to the property owner on February 17, 2016, and certified letters were mailed to adjacent property owners on February 5, 2016. The agenda for the meeting included a reference to Case 16-02 and was posted on

the City's website on February 8, 2016. The Board finds that the notice requirements of §164-166 have been met.

3. No request for inspection of the Property in accordance with §164-166E was received.
4. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.
5. The Applicant offered evidence at the hearing in favor of the special exception request. Others testified in favor or against the special exception request. Other than the application for a special exception and a pre-hearing statement submitted by the Applicant, a pre-hearing statement was submitted by Kelly J. Shaffer, Esquire on behalf of Kenneth Kacmarski and Eagle Oil Company, Inc., protestants in opposition (both of whom subsequently withdrew their opposition and did not present testimony at the hearing), J. Brooks Leahy, Esquire, on behalf of Tevis Oil, Inc. and Stanley H. Tevis, III, protestants in opposition (both of whom withdrew their opposition and did not present testimony at the hearing), and emails from the Lockard family, protestants in opposition and adjoining property owner, who were not present at the hearing and did not personally testify, though the emails were admitted into evidence as Exhibit 13 and as an attachment to the Planning Director's staff report.

Substantive Findings:

6. The Property is located in the B Business Zone of the City of Westminster.
7. The Applicant is the lessee of approximately 2.66 acres for the subject use, being the eastern portion of a larger parcel that is approximately 4.98 acres Property. The current owner is K&G Properties, LLC, 11 Antrim Blvd, Taneytown, Maryland 21787. The owner has consented to the Applicant's application.
8. The Property is currently vacant.

9. The Property is located along and will have vehicular access to a major commercial thoroughfare, Baltimore Blvd. (MD Route 140). The Property is generally flat, though it slopes slightly to the south and to the east. The slope shouldn't require retaining walls. As shown on the Recommended Neighborhood Map submitted with the Planning Director's staff report, the Property is surrounded by the jurisdictional boundaries of the City of Westminster to the east, most of the south, and most of the west, and across Baltimore Blvd. to the north. East and west of the Property the Carroll County zoning is B-G General Business, to the south it is R-40,000 Residence (beyond which is R-20,000 Residence), and to the north, across Baltimore Blvd., is I-R Restricted Industrial. Before annexation into the City of Westminster, the Property was in the B-G General Business Zone of Carroll County.
10. As shown in Exhibits 5 and 9, the neighborhood is typified by development consistent with a business district and industrial district, with residential neighborhoods located to the south of the Property outside the territorial limits of the City of Westminster. The Property is located within a State of Maryland Priority Funding Area.
11. The Applicant wishes to construct a hybrid convenience store/restaurant and automobile service station with a building size of approximately 6,558 S.F, surrounded on all sides by walkways and parking spaces, with additional parking on the western boundary of the leased portion of the Property and to the south. Inside the building the Applicant intends to sell food and beverages, have a dining area with seating for 30 people with music and free wifi service, and a large bathroom. The building will have an exterior restaurant appearance, emphasizing windows, including faux windows with lighting and awnings on the rear of the building. Sixty-six (66) parking spaces are proposed. The gasoline service is to be located to the north of the store (between the building and Baltimore Blvd. to the north), with a "right

in-right out” entrance and exit access to Baltimore Blvd. on the northwest side of the leased portion of the Property and “exit only” access to Baltimore Blvd. on the northeast side of the Property. The gasoline service plan is for 6 fuel islands (12 fueling positions), covered by a canopy, with the diesel fuel service only on the end islands. Underneath the pumps is a sump which has monitor alarms and triple sleeved pipes. A 20,000 gallon gasoline storage tank and an 8,000 gallon diesel fuel storage tank will be underground, north of the canopy/service islands. The storage tanks will be double walled, with monitoring of the interstitial space around the tanks and connected to alarm systems in the manager’s office (in the building), subject to the requirements of MDE and compliance with federal regulations. LED lighting surrounding the outside of the building and the parking areas will limit the ambient light, the details of which will be addressed in site plan review and by the Planning Director. There is ample room on the leased portion of the Property for landscaping, which is proposed to surround the parking lot area and along the southern boundary of the leased portion of the Property, providing screening between the development and the adjacent property. The proposed use is to be open 24 hours a day, 365 days a year.

12. As set forth in § 164-41, the convenience store/restaurant portion of the proposed use on the Property is a permitted use in the B Business Zone.

13. Pursuant to §164-3A, Service Station, such a use is defined as:

“Any area of land, including buildings and other structures, that is used to dispense motor vehicle fuels, oil and accessories at retail, where minor repair service is incidental and where no storage or parking space is offered for rent.”
§164-3A.

14. Based upon the findings in 11 above, the Applicant’s proposed use of the Property qualifies as a service station use under the definition of §164-3A.

15. Pursuant to §164-42S of the Zoning Ordinance, a service station is a special exception use in the B Business Zone. To qualify for a special exception for service station, the Applicant must prove by a preponderance of the evidence that the proposed use meets the requirements of §164-149 and the general requirements for special exceptions in §164-170. The distance requirements of §164-140 are also applicable to the proposed special exception use.

16. §164-149 requires findings that:

“A. An automobile service station may be permitted upon a finding by the Board, in addition to the findings required in Article XXII of this chapter, that:

(1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.

(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of public assembly.

(3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering the service required, the population, character, density and number of similar uses.

(4) The evidence of record establishes that for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City and that the use at the location proposed will not result in a multiplicity of proposed uses. In the absence of convincing evidence to the contrary, the following shall constitute lack of probability of a reasonable public need:

(a) An automobile service station within one mile on the same side of the road, except at intersections.

(b) The presence of two service stations within the four quadrants of an intersection, including 1/2 mile from the center of the intersection in any direction.

(5) The proposed use will be conducted upon a lot having a minimum area of 20,000 square feet, provided that this size is adequate to meet the necessary services and the setback and buffering requirements, and a minimum lot frontage of 120 feet on a public road shall be required for each automobile service station site.

(6) The lot shall contain landscaping on a minimum of 10% of the site area.

B. In addition, the following requirements shall be met:

(1) When such [use] abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted Master Plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence not less than five feet in height, together with a three-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Screening shall not be required on street frontage.

(2) Signs, products displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways shall be prohibited.

(3) Lighting shall be designed and controlled so that any light source, including the interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways or parking areas. Such lighting shall not shine on or reflect on or into residential structures.

(4) All gasoline service station developments shall meet City off-street parking standards to ensure the safe movement of vehicles and pedestrians. The arrangement of structures, islands, driveways, parking and landscaping shall be designed so as to ensure maneuvering ease, to serve the community and not to adversely affect adjacent properties.

(5) Driveways shall be designed and located to ensure a safe and efficient movement of traffic on and off the site from the lane of traffic nearest the curb. The design, location and construction of all vehicular access driveways shall be in accordance with the applicable specifications and standards of the Department of Public Works.

(6) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line, and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall normally be at least 20 feet between driveways on each street, and all

driveways shall be perpendicular to the curb- or street line unless the Planning Director determines that those configurations would present an unreasonable risk to vehicular and pedestrian traffic and grants a modification of those requirements which would eliminate or minimize such risks. [Amended 1-28-2008 by Ord. No. 774]

(7) Vehicles shall not be parked so as to overhang in the public right-of-way.”
§164-149.

17. Brian Soyka, an engineer and permitting specialist, was accepted as an expert by the Board.

Mr. Soyka testified that there would be no nuisance in the nature of noise, fumes, odors or physical activity by the proposed service station use. The Planning Director’s staff report noted the absence of any concerns related to the health and safety associated with the proposed special exception use. The Lockard family email of February 24, 2016 asserted that “The noise from the property by the machines and customers will echo right into the back of our house...” The same email insisted that lighting not shine onto their (adjoining) property. The Lockards’ were not present to testify and so their assertions about potential noise and light trespass were insufficiently detailed to be persuasive and, not being capable of cross-examination, were of limited probative value to the Board. The Applicant’s witness Martin Hackett (also accepted as an expert in land use planning by the Board) was asked if there would be outside music at the pumps, to which the Applicant’s witness (and representative) answered that if the music became a problem, it could be turned off. The Applicant does not propose any outside seating. The Applicant proposes green space south of the parking lot and landscaping for screening, which can shield light, noise and visual effects of the use from the adjacent property to the south. The Board finds that the proposed service station use will not constitute a nuisance because of noise, fumes, odors or physical activity and that any potential for adverse impacts, if any, are no greater or more detrimental on the subject

Property that would be expected on other locations within the B Business Zone. Though the Property is adjacent to a residential use outside the limits of the City of Westminster (to the south), the Board finds that the 85' buffer and required landscaping will screen any de minimis noise, odors, fumes or physical activity from the service station use. Therefore, the Board finds that the requirement of §164-149A(1) has been satisfied.

18. The Applicant provided the testimony of Joseph J. Caloggero, Vice President of The Traffic Group, a professional traffic engineer who testified about the traffic impacts of the proposed convenience store/restaurant and service station use on the Property. The Board accepted Mr. Caloggero as an expert in traffic engineering and analysis. In Mr. Caloggero's opinion, there are no concerns regarding negative traffic impacts for the proposed development on the Property. Considering the location of the service station use on Baltimore Blvd., the proposed entrances are adequate, the proposed plan offers safe and efficient delivery of fuel and other goods, and emergency services (including fire) access will be adequate on the Property. The Applicant proposes that the eastern side of the building be the access point for deliveries, which are generally scheduled for the evening hours. The vehicular access to the Property will consist of a "right in-right out" entrance and exit access on the northwest side of the leased portion of the Property and exit only access on the northeast side of the Property. Mr. Hackett (the land use planning expert) also testified that the access points were adequate and could accommodate emergency services. He also pointed out that the State Highway Administration will also review the access points to Baltimore Blvd. There was no evidence that any traffic hazard or traffic nuisance would be created by the proposed service station use because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other

buildings or proposed buildings on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of public assembly. Therefore, the Board finds that the requirements of §164-149A(2) have been met.

19. The proposed service station use on the Property will be located within areas developed with other business and light industrial uses and will offer services needed by those surrounding uses. The proposed use will not create any adverse impacts on the logical development of the general neighborhood, or the B Business Zone (commercial) in which the Property is located, but instead is consistent with the development of the neighborhood and the B Business Zone. Therefore, the Board finds that the requirements of §164-149A(3) have been met.

20. The Applicant offered substantial and persuasive testimony and documentation that there is a public convenience and service need for the proposed service station use. The Applicant offered Joseph M. Cronyn, Senior Managing Director of Valbridge Property Advisors (Lipman Friezell & Mitchell LLC) who prepared a market need analysis (Exhibit 10) for the proposed service station use on the Property. The Board accepted Mr. Cronyn as an expert in market needs analysis. Mr. Cronyn testified that a service station accommodates a public need when it meets the demand of the public living and working within a reasonable trade area for fuel service. He described public need analysis to mean “expedient or reasonably convenient and useful to the public” or “convenient, useful, appropriate, suitable, proper and conducive to the public in the surrounding area” (citing prior cases). The Board accepts these characterizations of the meaning of public need as reasonable.

21. Mr. Cronyn compared the total demand for gasoline with the total supply for gasoline in the Carroll County area of the Property, and found that demand far surpasses supply. His report

reasonably and adequately defined the “Westminster Trade Area” as the relevant area of analysis (see pages 9 through 10). There are 15 service stations in the Westminster Trade Area, though one of those is the current service station operated by the Applicant and which will be closed when the proposed use is built. There are an additional 8 service stations outside of Westminster and on the periphery of the Westminster Trade Area. The analysis found that the 14 service stations (excluding the current Sheetz location, which will be closed) provide an estimated 18.2 million gallons per year. The other fueling stations on the periphery of the Westminster Trade Area also compete for consumer gasoline purchases, and they pump an estimated 10.4 million gallons per year. Based upon demographic data reviewed in the report, the estimated demand in the Westminster Trade area is 31.68 million gallons per year. The market analysis concluded that the unmet demand in the Westminster Trade Area is 3.1 million gallons per year. The Board accepts this analysis as reasonable and based upon the opinions of an expert. Therefore, the Board concludes that the Applicant’s proposed service station use meets an unmet demand and in that respect services the public convenience and need.

22. Section 164-149A(4)(a) and (b) provides two standards upon which the Board must evaluate the probability of a lack of public need. The Applicant asserts that both conditions are met, as there is no active service use on the eastbound side of Baltimore Blvd. (the same side as the Property) within one mile and the Property will not be at a four quadrant intersection. The Wawa fueling station was measured as .54 miles away from the Property as the crow flies, .97 miles by driving but is on the other side of Baltimore Blvd (See Exhibit 7). Exhibit 8 shows that the Hess Station is the closest station in the City of Westminster on the same side of Baltimore Blvd. as the property, and that is 1.54 miles away from the Property. The

Planning Director's staff report notes that there is a 24/7 Fuel Mart located less than a mile east of the Property on the same side of Baltimore Blvd as the Property (outside the city of Westminster). The testimony was that the 24/7 Fuel Mart site is not operational and is currently completely fenced in. The Board finds that the conditions of subsections (a) and (b) are not met and therefore a presumptive probability of lack of public need under the ordinance has not been presented. The Board further finds that even if a probability of public need under subsections (a) and (b) had been presented, convincing evidence was presented in the Valbridge market analysis that a public need does exist.

23. In addition, the Board finds that competition between suppliers of gasoline (service station uses) is good for customers and is a relevant consideration as part of the public convenience and need. Competition will benefit consumers as far as convenience, price, and the range or services available. The Applicant's proposed service station use will provide added competition without providing a multiplicity of uses that would cause an adverse impact to the public. The Applicant will be closing its current Sheetz service station on Main Street, as it is insufficient for the style of combination convenience store/restaurant and service station use proposed by the Applicant. The current location was described by the Applicant as a "brand eroder", meaning its insufficiencies hurt the Sheetz brand. The Applicant asserts that gasoline service is not generally "destination shopping" but rather a situational need of the customer, which means that a diversity of service locations within the City of Westminster and the "Westminster Trade Area" better meets the public need. The Board finds this assertion to be reasonable. The Board finds that the Applicant's proposed use will not eliminate competition, but instead foster competition.

24. Based upon the findings in paragraphs 20 through 23 above, the Board finds that the Applicant has established that the proposed use will meet a need (of the public convenience and service), and therefore the requirements of §164-149A(4) have been met.
25. The portion of the Property leased by the Applicant for the proposed use exceeds 20,000 S.F. and the proposed frontage on Baltimore Blvd. exceeds 120 feet in length. The proposed total building floor ratio does not exceed twice the total lot area, so the dimensional requirements of §164-45A(1) will be met. The closest building to Baltimore Blvd. (the public street) under the Applicant's proposal is the fuel islands and canopy support structures, which will be over 80 feet from the public street (meeting the 30 foot limitation), so the dimensional requirement of §164-45B(1)(a) will be met. No side line for the proposed use is along an alley or public right of way, so the requirement of §164-45B(1)(b) is met. The parking is not dimensioned in relation to their proximity to a right of way or adjacent lots, though the only proposed parking use that is close is on the western boundary of the leased portion of the Property. Because the Property has not been subdivided, the western boundary of the leased portion of the Property keeps the proposed parking spaces at least 5' away from an adjacent lot, and therefore the requirement of §164-45B(1)(c) is met. However, the Board cautions that it would be advisable for the Applicant to plan for the parking spaces to be at least 5' from the western boundary of the leased portion of the Property, so that future development of the un-leased western portion of the Property (or eventual subdivision) is not impeded. This may be a subject properly addressed during site plan review. The building will be over 30 feet from the residential zone on the Property's southern boundary and therefore the requirement of §164-45B(1)(d) is met. The landscaping buffering requirements can be met. Based upon the foregoing, the dimensional and buffering requirements can be met for the

size of the leased portion of the Property, and therefore the requirements of §164-149(5) have been met.

26. There is enough land on the leased portion of the Property to meet the 10% landscaping requirement and the Applicant will need to establish sufficient plantings to meet this requirement and the requirements of the City's Landscape Manual as part of the site plan approval process.
27. The Property's southern boundary abuts a residential zone of Carroll County. There is no natural terrain feature on the southern boundary that would provide screening. Therefore, the Applicant must provide the southern boundary with a solid wall or a substantial, slightly, solid fence not less than five feet in height, together with a three-foot planting strip on the outside of the fence (south of the fence), planted in shrubs and evergreens, to meet the requirement of §164-149B(1). The Applicant has provided a general description of the landscaping planting along the southern border of the leased portion of the property. Screening of the southern boundary of the leased portion of the Property is important to mitigating noise, sight and light trespass impacts to the residential use on the adjacent property. The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.
28. The site plan has not yet been submitted and there was insufficient evidence for the Board to evaluate the adverse affect of signs, products, displays or other obstructions on the visibility to the service station's driveways, which are prohibited by §164-149B(2). The Property is not at an intersection, so the requirements of this section apply only to the impacts to the station driveways for this application. The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.

29. The site plan has not yet been submitted and there was insufficient evidence for the Board to evaluate the adverse impacts of lighting on surrounding or facing premises or the safe vision of operators of vehicles moving on Baltimore Blvd, said adverse impacts being prohibited by §164-149B(3). The Planning Director's staff report notes that the Applicant's lighting plan must meet the requirements of the Development Design Preferences manual at the site plan stage. The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.
30. Section 164-111C requires 2 spaces per bay and 1 space per employee shift. The food store would require 1 space per 200 square feet of floor area devoted to customer service. With 12 dispensers and 6,558 square feet at the convenience/restaurant store, the maximum required parking for these uses could be considered as 24 spaces for the 12 dispensers and 33 parking spaces for the food service store, leaving 9 spaces for employee parking. The Applicant's testimony was that it expected 8 employees per shift, less in the evening. The Applicant proposes 66 parking spaces. While it appears that Applicant can meet the parking requirements of §164-111, the arrangement of the parking, along with the structures, islands driveways and landscaping, must be arranged to ensure maneuvering ease, to serve the community, and not adversely affect adjacent properties, to meet the requirements of §164-149B(4). This arrangement and the mitigation of any adverse effects must be evaluated during the site plan approval process when the specifics of the site plan are presented, and therefore the requirements of §164-149B(4) shall be met as a condition of the granting of the special exception, via the site plan approval process.
31. The site plan has not yet been submitted and there was insufficient evidence for the Board to evaluate the design and location of driveways to ensure safe and efficient movement of

traffic on and off the site from the lane of traffic nearest the curb or to determine whether the design, location and construction of the vehicular access driveways are in accordance with the applicable specifications and standards of the Department of Public Works, as required by §164-149B(5). The Planning Director's staff report notes that the State Highway Administration will also need to review and permit the access to MD140 (Baltimore Blvd.). The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.

32. The Applicant's proposal places the fuel service pumps and canopy 82 feet from Baltimore Blvd. Section 164-149B(6) requires that the pumps or other service appliances shall be located on a lot at least 10 feet behind the building line. The building line is 30 feet from the lot line, so the pumps and canopy placement meets the requirement of §164-149B(6). The driveways are over 20' from each other as they access the street. Section 164-149B(6) also requires that driveways be perpendicular to the curb or street, unless the Planning Director determines that those configurations would present an unreasonable risk to vehicular or pedestrian traffic and grants a modification. The Applicant's proposed driveways remain subject to review of SHA. The Applicant has met the requirements of §164-149B(6) with respect to the pump or service appliance distance from the building line and the 20 foot minimum distance requirement. The angle of the driveways access points remains a condition of the granting of the special exception, via the site plan approval process.

33. There is no planned parking area which would overhang in the public right-of-way, so the requirement of §164-149B(7) has been met.

34. The proposed automobile service station use (including its convenience store/restaurant) is more than 100 feet from any other lot in a residential zone or in any other zone which

contains a dwelling, school, church or institution for human care. Therefore, the proposed service station use complies with the requirements of §164-140 of the Zoning Ordinance.

35. §164-170A requires a finding that:

“1.The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.” §164-170A.

36. As described in the 2009 Comprehensive Plan, the B Business Zone along Maryland Route 140 (Baltimore Blvd.) is typified by “...significant commercial activity during both day and evening hours, including weekends. MD 140 is a divided, multi-lane highway with good vehicular access. However, there are some traffic congestion problems during peak hours due to numerous access points along the highway and traffic signals at the major intersections.” See Chapter 9, Economic Development, Part 1 Business Patterns, Section 2: Maryland Route 140. The 2009 Comprehensive Plan also discusses the type of infill development proposed by the Applicant on this Property, which remains vacant, when it states: “There are many opportunities for redevelopment and infill along MD 140. Infill development, in its simplest form, is the development or redevelopment of land that has been bypassed, remains vacant, and/or is underutilized as a result of the continuing development process.” See Chapter 9,

Economic Development, Part 2 Existing Economic Development Trends, Section 2: Maryland Route 140. The Property is located in a commercial area which has design criteria necessary to accommodate automobile access and high traffic volumes. See 2009 Comprehensive Plan, Chapter 5 Land Use, Part 6 Land Use Designations, Commercial. The Applicant's property was also annexed into the City of Westminster and Goal M3 of the 2009 Comprehensive Plan states: "While recognizing infill development is the preferred method of growth, plan for the expansion of City boundaries to accommodate growth in the future." The Board finds that the proposed service station use, a use made in conjunction with the permitted use of a convenience store/restaurant, is consistent with the typical uses of the B Business Zone and is consistent with, and will not adversely affect, the general plan of development of the B Business Zone.

37. There was no evidence of any adverse impacts to the health and safety of residents or workers in the area caused by the proposed service station use and the Board finds that it would not create such adverse impacts. There was no evidence that noise, fumes, or other nuisances would be created by the use. The storage tanks and fuel service pumps are heavily regulated and safety concerns are best met through those regulatory processes. The screening required by §164-149B(1) should mitigate any affects normally associated with a service station use on the neighboring properties south of the Property.
38. There was no evidence that the proposed service station use would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not. The number of people living in the area will not change. The road serving the Property appears to be adequate to handle volume of traffic that would utilize the proposed service station use, though the impact of

traffic on the roads, along with storm drainage, stormwater management, and related development issues will remain a consideration during site plan review by the Planning & Zoning Commission.

39. The Board finds that there was no evidence that the proposed service station use would be detrimental to the use or development of adjacent properties or the general neighborhood. There was testimony that the use would not create noise or other health and safety adverse impacts over and above a use commonly expected by a service station use on this Property. The Applicant provided an impact study (See Exhibit 12) and a real estate appraiser, David Straitman (accepted by the Board as an expert) who testified that he anticipated no impact on surrounding property values and that the Sheetz store in Taneytown had no impact on the value of other properties. The conservation of property values may be considered by the Board pursuant to §164-169B(5). There was testimony that there would be no adverse impacts on other businesses (in the general neighborhood). The Lockard family email of February 24, 2016 expressed concerns about a 24 hour, 7 day a week business on the property impacting their residence, but the special exception standards do not impose any form of restriction on service station uses operating hours and as described in the finding in paragraph 36, the 2009 Comprehensive Plan contemplates significant evening and weekend uses in the B Business Zone. It is also quite common for service stations to be open 24 hours a day, or at least much later than the 10 p.m. closing time of other local businesses in the area suggested as a metric in the Lockard email. Given that special exception uses are presumptively valid in the relevant zone absent an adverse impact derived from the particular location (in this case, the B Business Zone), the Board finds that there is nothing particular to the location of the proposed use which would require a limitation on the hours or days of

operation. The Board notes again that there was no direct testimony, subject to cross-examination, by the Lockard family, and therefore it is less persuasive. The residential property abuts the border of the B Business Zone and the substantial commercial and light industrial development along Baltimore Blvd (both in and outside the City of Westminster jurisdictional limits). In addition, the Lockard property is used in a semi-agricultural context, as the family grazes cows on the property. There is nothing particular about proposed service station use on the subject Property that would impose a special adverse impact different than such a use in other locations of the B Business Zone, and the impacts are consistent with most, if not all, of the uses as of right within the B Business Zone. Some of the uses as of right within the B Business Zone would have an even greater impact on adjacent residential uses. The Board finds that the proposed service station use is consistent with the overall neighborhood and the commercial development pattern in the B Business Zone and will not change the character of the general neighborhood, considering the services required, at the time of the application, the population, density, character and number of similar uses.

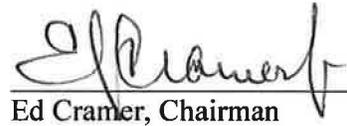
40. The Board finds that the proposed service station use will be consistent with the orderly growth of the community, a factor which may be considered by the Board pursuant to §164-169B(2).

41. Therefore, based upon all the previous findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on March 1, 2016. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 2ND day of May 2016. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland


Ed Cramer, Chairman

	*	
IN THE MATTER OF:	*	BOARD OF ZONING APPEALS
Applicant: Gary Troy	*	CITY OF WESTMINSTER, MD
Property: Lot 21B, Magna Way Westminster, MD 21157	*	
	*	Case No. 16-03
Application for Special Exception	*	

* * * * *

**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 16-03 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals" or the "Board") on January 21, 2016, by Gary Troy (the "Applicant"), contract purchaser of the property located at Lot 21B Magna Way, Westminster, Maryland 21157, the parcel identified as Tax Map 113, Grid 17, Parcel P.4836, Lot 21B (hereinafter referred to as the "Property"), for a special exception pursuant to §164-54.K, §164-155.2 and §164-170A of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for a private, indoor recreational facility in the I-R Restricted Industrial Zone; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on March 1, 2016, in Town Hall, City of Westminster, Maryland, to consider Application No. 16-03. At the conclusion of the March 1, 2016 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 16-03 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 16-03, that a special exception to allow the use of the Property for a private, indoor recreational facility is hereby **GRANTED, subject to the following three conditions set forth below:**

1. The Applicant is bound by the Board's stated approval condition that the Applicant has met all the conditions for granting a special exception by a preponderance of the testimony and evidence of record and shall comply with any additional conditions, restrictions or requirements included by the Planning & Zoning Commission during its site plan review; and

2. The occupancy of the private, indoor recreational facility shall be limited to 320 people; and

3. In consultation with the Planning Director, Applicant shall consider, in good faith, alternatives to improve the proposed screening between the private, indoor recreation facility and nearby residential structures, including the goal of abating lighting trespass, the sufficiency of such alternatives to be determined by the Planning Director.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The Application for special exception was filed on January 21, 2016.
2. In anticipation of the March 1, 2016 hearing, the Property was posted with a sign notice of hearing on February 12, 2016, notice was published in the Carroll County Times newspaper on February 7th and February 21, 2016, and certified letters were mailed to adjacent property owners on February 5, 2016. The agenda for the meeting included a reference to Case 16-03

and was posted on the City's website on February 8, 2016. The Board finds that the notice requirements of §164-166 have been met.

3. No request for inspection of the Property in accordance with §164-166E was received.
4. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.
5. The Applicant offered evidence at the hearing in favor of the special exception request. Others testified in favor or against the special exception request. Other than the Application for a special exception and a pre-hearing statement submitted by the Applicant, no other pre-hearing submissions were accepted into the record.

Substantive Findings:

6. The Property is located in the I-R Restricted Industrial Zone of the City of Westminster.
7. The Applicant is the contract purchaser of the Property. The current owner is South Carroll Properties, LLC, 1393 Progress Way, Suite 902, Eldersburg, Maryland 21784-6473.
8. The Property is currently undeveloped and is comprised of approximately 2.39 acres, or 104,108 S.F.
9. The Property is located within the Westminster Technology Park. As shown on Exhibit 4, the Property is generally flat, though on the northeastern side it slopes upward at a grade of approximately 10' from the proposed building's eastern wall to Old Bachmans Valley Road, a distance of approximately 65 feet. The Property is bounded on the north by Magna Way, a public right of way. On the other side of Magna Way is an existing light industrial style building. To the immediate west of the Property is a 30' wide private roadway with access to Magna Way to the north and which proceeds south to serve a developed property. The private roadway will be a use in common with other private properties. Across from the

private roadway to the west is an existing light industrial style building. To the immediate east of the Property is Old Bachmans Valley Road, a public right of way, across from which is the boundary of the City of Westminster corporate limits. On the other side of that boundary are single family residential structures located within the R-40,000 Residential Zone of Carroll County. To the immediate south of the Property is undeveloped land and to the southwest is a developed property with a light industrial style building used by a roofing company (that is currently served by the private roadway).

10. As shown in the photographs of Exhibits 2, 3 and 5, the neighborhood is typified by development consistent with a business or technology park, with residential neighborhoods located to the east of Old Bachmans Valley Road (and which are outside of the Westminster City limits). Beyond the immediate vicinity of the Property, northeast of the Westminster Technology Park is an agricultural zone (also outside the City of Westminster).
11. The Applicant wishes to construct a 20,000 S.F. (100' x 200') building of steel construction to serve as a private, indoor recreational facility focusing on the sport of volleyball, with 4 volleyball courts and ancillary basketball nets. The building would be used for volleyball tournaments, team practices, and summer camps. The style of the building will be similar to the buildings shown in Exhibit 2 and 3 (light industrial in style). The building will need to be high enough to accommodate a 24' ceiling necessary for volleyball. The building will not have locker rooms or showers. The building will have 4 rows of bleacher style spectator seating and may have a concession stand (inside) with a reception area with some seating. No outdoor activities are planned for the Property. The use will be operated as a for-profit, commercial business. The typical user of the proposed facility will be 12 to 18 years old (student age), with some parents dropping off children and others staying to watch. During

the school year, the recreational facility will only be open after school hours. During the summer, the facility will be used all day. The Applicant expects to have 4 employees, but perhaps more. The current plan is for 101 total parking spaces, located south of the proposed building and accessed via the private roadway that leads to Magna Way. No access will be provided to the Property from Old Bachmans Valley Road.

12. Pursuant to §164-3A, Private, Indoor Recreational Facilities, such a facility is defined as:

“Rooms and/or buildings that are designed for recreational use as sports facilities and operated by a private non-governmental entity such as for-profit, commercial business or private, non-profit. Such facilities do not include outdoor uses and are not included in the accounting for any required environmental open space and/or recreational open space.” §164-3A.

13. Based upon the findings in 11 above, the Applicant’s proposed use of the Property qualifies as a private, indoor recreational facility under the definition of §164-3A.

14. Pursuant to §164-54K of the Zoning Ordinance (passed by Ordinance 861), a private, indoor recreational facility is a special exception use in the I-R Restricted Industrial Zone. To qualify for a special exception for a private, indoor recreational facility, the Applicant must prove by a preponderance of the evidence that the proposed use meets the requirements of §164-155.2 and the general requirements for special exceptions in §164-170.

15. §164-155.2 requires a finding that:

A. Private, indoor recreational facilities may only be located on a lot no greater than 3 acres.

B. Such private facilities may only be designed for a capacity of no greater than 320 persons.

C. Such private facilities are not subject to the additional distance requirement in §164-140.

D. Notwithstanding any other provision, such facilities shall comply with or exceed required parking standards for recreation facilities and centers under §64-111 with no reductions.” §164-155.2.

16. The Property is 2.39 acres, less than the required 3 acres in §164-155.2A. The Applicant has consented to and shall be bound to a condition that the facility shall have a capacity no greater than 320 persons, thereby meeting the requirement of §164-155.2B. The distance requirement of §164-140, which requires that any buildings be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care, does not apply to this Application, pursuant to §164-155.2C.

17. The Applicant proposes 101 parking spaces, 4 of which are designated for handicapped parking, on a paved parking facility. §164-111 (Recreation facilities and centers) requires 1 parking space for every 4 persons of estimated facility capacity, plus 1 space per employee and 1 space per facility vehicle and piece of mobile equipment. Given the capacity cap of 320 persons on the Applicant's proposed building/use, and testimony that there would be 4 employees (possibly more), and no anticipated facility vehicles or mobile equipment, the Applicant is required to have at least 84 parking spaces. The proposed 101 parking spaces exceed the 84 parking space requirement and leaves room for potentially more than 4 employees. The Board finds that the requirement of §164-155.2D has been met.

18. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.” §164-170A.

19. The 2009 Comprehensive Plan includes a variety of goals related to recreational facilities in the City of Westminster. The proposed private, indoor recreational facility may be considered as a tourism component for the City because people will travel to the city to compete in the Applicant’s proposed tournaments and summer camps. Chapter 10, Tourism and Culture, of the Comprehensive Plan includes a community vision for tourism and under Part 7, Tourism & Culture Strategies, Section 4, Sports Tourism, includes

“...The overall vision of the sports Tourism Strategy is to host tournaments, camps and clinics that would bring visitors and revenue to Westminster.

In addition to the economic benefits for direct service businesses, such as service stations, eating establishments and hotels-building a sports’ tourism industry for the Westminster area will have numerous positive impacts for the City. These positive impacts include increased community spirit, the development of a highly skilled volunteer base, and increased positive exposure for Westminster and Carroll County.”

The proposed private, indoor recreational facility use will also serve to develop the Westminster Technology Park, which is identified in Chapter 9, Economic Development, of the Comprehensive Plan, and will create economic benefits which are the goals of that Chapter, including some employment opportunities.

20. The Applicant’s proposed private, indoor recreational facility will not adversely impact the general plan for the development of the I-R Restricted Industrial District and in fact, supports the plans as outlined in the 2009 Comprehensive Plan. Doug Barmoy of Hanover Land Services, Inc. testified on behalf of the Applicant and was accepted by the Board as an expert

in land planning and design. Mr. Barmoy opined that the Applicant's proposed development plan would be consistent with the zoning ordinance. He opined that the landscaping shown on Exhibit 4 meets the requirements of the code and will provide some screening of the Property from the residential uses to the east, though the elevations will make complete screening impossible. He opined that the proposed building and development would be consistent with the types of buildings typical of the I-R Restricted Industrial Zone and the Westminster Technology Park. The private, indoor recreational facility use is consistent with other uses permitted in the I-R Restricted Industrial Zone so long as there are no adverse impacts (see findings 21 through 23 demonstrating the absence of adverse impacts).

21. There was no evidence of any adverse impacts to the health and safety of residents or workers in the area caused by the proposed private, indoor recreational facility use and the Board finds that it would not create such adverse impacts. There are no outside uses or activities associated with the proposal. There was no evidence of noise, fumes, or other nuisances would be created by the use. There are no schools in the I-R Restricted Industrial Zone and there are no churches within approximately a mile. There are no historical structures or uses to protect within the immediate vicinity of the Property.
22. There was no evidence that the proposed private, indoor recreational facility use would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not. The number of people living in the area will not change. The proposed use will serve mostly students, so it is expected that the Property will not be used at full capacity except during competitive events. The Applicant will need to demonstrate water usage requirements, which along with public road access, storm drainage stormwater management and related issues will be

evaluated during site plan review before the Planning & Zoning Commission. The roads serving the Property are adequate to handle the increase in volume that would be generated by the proposed use. The Property will be accessed via Magna Way, which is a main thoroughfare to reach Route 97. The traffic to and from Route 97 is therefore contained to the Westminster Technology Park and does not impact surrounding residential areas. There was testimony by two opponents who reside in the residences to the east, raising concerns about the proposed use increasing traffic congestion, but no specific evidence was provided to demonstrate a special adverse impact. The Board finds that most of the traffic will access the Property via Route 97 to Magna Way, and therefore will not create a significant adverse impact to traffic volume on Old Bachmans Valley Road. Traffic will remain a consideration during site plan review by the Planning & Zoning Commission.

23. The Board finds that there was no evidence that the proposed private, indoor recreational facility use would be detrimental to the use or development of adjacent properties or the general neighborhood. There was testimony by opponents that they feared the proposed use would decrease their residential property values, but the Board finds that evidence to be anecdotal and unpersuasive. The residential properties abut the border of the Westminster Technology Park. There is nothing particular about proposed private, indoor recreational facility on the subject Property that would impose a special adverse impact, and the impacts are consistent with most, if not all, of the uses as of right within the I-R Restricted Industrial Zone. Some of the uses as of right within the I-R Restricted Industrial Zone would have an even greater impact on adjacent residential uses. The Board also notes the legislative intent to exclude from consideration the distance of private, indoor recreational facilities from residences, considering that the 100' distance restriction found in §164-140 is excluded as a

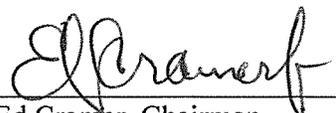
requirement for such uses by §164-155.2C. The Board finds that the proposed private, indoor recreational facility use is consistent with the neighborhood and the industrial development pattern in the I-R Restricted Industrial Zone and will not change the character of the general neighborhood, considering the services required, at the time of the application, the population, density, character and number of similar uses. The Board finds that there are no special adverse impacts associated with the Applicant's proposed private, indoor recreational facility. The Applicant indicated a willingness to install a timer with respect to lighting, to limit the impact of lighting on adjacent properties.

24. Therefore, based upon all the previous findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on March 1, 2016. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 18th day of April, 2016. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland



Ed Cramer, Chairman

IN THE MATTER OF:

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* **BOARD OF ZONING APPEALS**

Applicant: FR Conversions, Inc.

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* **CITY OF WESTMINSTER, MD**

**Property: 1231 Tech Court
Westminster, MD 21157**

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Case No. 16-06

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Application for Special Exception

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**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 16-06 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals" or the "Board") on September 26, 2016, by FR Conversions, Inc. (the "Applicant"), through its affiliated company 1231 Tech Court LLC, owner of the property located at 1231 Tech Court, Westminster, Maryland 21157, the parcel identified as Tax Map 0113, Grid 0011, Parcel P.4836, Lot 2 (hereinafter referred to as the "Property"), for a special exception pursuant to §164-54A, §164-41A(42) and §164-170A of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for a restaurant use in the I-R Restricted Industrial Zone; and

WHEREAS, the Applicant's request for a special exception was made to allow a portion of its current building on the Property to be used for restaurant and lunchroom use (hereinafter a "lunchroom use"), supplementing the primary use of manufacturing conversion vehicles and a previously approved supplementary use of automobile sales and service (approved by special exception in Case 16-01) without any proposed new construction; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on November 1, 2016, in Town Hall, City of Westminster, Maryland, to consider Application No. 16-06. At the conclusion of the November 1, 2016 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 16-06 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 16-06, that a special exception to allow the use of the Property for a lunchroom use, in addition to the manufacturing use currently allowed as of right on the Property and the automobile sales and service use currently allowed by special exception (Case 16-01), is hereby **GRANTED, subject to the following conditions set forth below:**

1. The lunchroom use shall be limited to delivery and carryout only for outside patrons, with inside dining being limited to tenants of the building, employees and their invited guests; and

2. Applicant will install code compliant signs inside the dining area of the lunchroom and at the outside exit noting that the dining area of the lunchroom use is for employees only.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The Application for special exception (Exhibit A) was filed on September 26, 2016.
2. In anticipation of the November 1, 2016 hearing, the Property was posted with a sign notice of hearing on September 23, 2016, notice was published in the Carroll County Times

newspaper on September 11th and September 25, 2016, and certified letters were mailed to adjacent property owners on September 12, 2016. The agenda for the meeting included a reference to Case 16-06 and was posted on the City's website on September 27, 2016. The Board finds that the notice requirements of §164-166 have been met.

3. No request for inspection of the Property in accordance with §164-166E was received.
4. The hearing for Case 16-06 was originally scheduled for and held on October 4, 2016. The Board of Appeals received a request for a continuance on behalf of Mr. Mackey. No opposition to that request was received and the Applicant was not in attendance. The Board granted the request and the hearing was rescheduled for November 1, 2016, in accordance with the Board's authority to grant continuances in §164-168D.
5. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.
6. Other than the Application for a special exception and a pre-hearing statement submitted by the Applicant, no other pre-hearing submissions were accepted into the record.

Substantive Findings:

7. The Property is located in the I-R Restricted Industrial Zone of the City of Westminster.
8. The Applicant is a second-stage manufacturer for vehicles on the Property, which is a use as a matter of right within the I-R Restricted Industrial Zone. The Applicant is affiliated with 1231 Tech Court LLC, the owner of the Property.
9. The Property is developed with a 150,000+ square foot building which was previously the General Dynamics Robotics plant.
10. The Property is located within the Westminster Technology Park. It is bounded on the north and south by developed light industrial, business park style buildings. To the immediate west

of the Property is Tech Court, a public right of way, and across that street are other light industrial, business park buildings. To the immediate east of the Property is the Westminster City boundary and agricultural use property.

11. As shown on the zoning data overlay photograph on page 24 of Exhibit A and the expanded zoning map on page 25 of Exhibit A, the neighborhood is typified by development consistent with a business or technology park, with some residential neighborhoods located outside the immediate vicinity to the southeast (south of Old Bachmans Valley Road and which are outside of the Westminster City limits).
12. The Applicant wants to supplement its manufacturing operation and automobile sales and services of the manufactured conversion vehicles with a lunchroom use that allows sales of food and beverages to the general public. The lunchroom is currently in operation but only serves employees working in the building. As shown on Exhibit 12, the lunchroom use will occur within a small portion of the existing building, with the entrance to that use noted as the “side entrance” on Exhibit 12, said entrance located on the eastern side of the building and shown from the outside on Exhibit 10. Exhibit 3 shows the layout of the current lunchroom (labeled ‘cafeteria’) as well as the hallway connecting to the proposed customer entrance. Exhibit 4 is a picture showing the “dining area” of tables and chairs, and Exhibits 5 through 8 showing the food service area, kitchen and sign menus for the lunchroom.
13. Pursuant to §164-54A, a lunchroom use is a special exception use in the I-R Restricted Industrial Zone as it is one of the uses referenced (§164-41A(42)) under Subsection A.
14. To qualify for a special exception for a lunchroom use, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for special exceptions in §164-170. There are no specific special exception requirements for a

lunchroom use in the zoning ordinance. The Board may also consider the “criteria for determination” listed in §164-169A & B. As required by §164-171B, the Application is also subject to the parking requirements of Article XVI.

15. §164-170A requires a finding that:

“1.The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

16. The 2009 Comprehensive Plan includes a variety of goals related to economic development including Goal E2, Objective 3, which is to “Support the retention and expansion of existing businesses, while exploring the opportunities for new business development.” The proposed special exception use supports this goal and the general goals of the 2009 Comprehensive Plan by expanding the business use. The lunchroom use is consistent with other uses permitted in the I-R Restricted Industrial Zone so long as there are no adverse impacts, and there was no evidence of adverse impacts.

17. The vast majority of the Property is and will remain in service to the manufacturing operations of the Applicant. The intensity of that manufacturing use has expanded and is

projected to continue to expand. The Applicant expects to build 2,000 conversion vehicles in the next year and can ultimately do up to 5,000.

18. The Applicant manufactures conversion vehicles primarily for sale to dealers, but there are some sales to end users and so the Applicant has previously obtained a special exception to have auto sales and service on the Property.

19. On March 31, 2016, the Applicant completed constructed the lunchroom to serve its employees and those of lessee tenants in the same building (General Dynamics Robotics Division and Universal Medical HealthCare Systems, describing it as the FRC Café Operation. The cost of the lunchroom improvements was \$130,000. The motivation was to provide building employees with a nice facility for fresh and healthy food that is conveniently on site (so that employees do not have to travel off the Property). There was testimony of limited options for food in close proximity to the Property and other industrial uses in the Technology Park (Jiffy Mart at Rt.97 and Magna Way and Tina's Deli on the west side of Rt. 97). The Café will be open 5 days a week, from 7 a.m. to 4 p.m. A dinner menu could be added if a second work shift is added to the manufacturing business (expanding the hours). The special exception is necessary to begin to service customers outside the Property, and the Applicant is targeting those businesses located within the Technology Park, for delivery and take out business. The Applicant does not expect to target the residential uses in the area as part of the lunchroom marketing. The current lunchroom layout provides for seating for up to 52 people. Based upon concerns previously raised about the Applicant's lunchroom use to adequately control for the consequences of a lunchroom offering on-site dining for patrons arriving from off the property, the Applicant stipulated to a condition that the special exception be limited by excluding on-site dining for the general public. This

would restrict the public patronage to carry-out and delivery, reserving the inside dining area for employees of the building. The Board accepted this stipulation and proceeded to evaluate the Application based upon this limitation. The lunchroom would employ 2 employees in the kitchen and one, but perhaps up to 2 or 3 delivery employees based upon need.

20. There was no evidence of any adverse impacts to the health and safety of residents or workers in the area caused by the proposed lunchroom and lunchroom use and the Board finds that it would not create such adverse impacts. There is sufficient distance from the residential uses to the southeast of the Property (outside the Westminster Technology Park).
21. With one exception (traffic discussed below), there was no evidence that the proposed lunchroom use would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not overburden such facilities. The number of people living in the area will not change. A local resident (and owner of a competitor restaurant) testified in opposition to the special exception application and testified that the “traffic was horrendous in the area”. The Applicant’s testimony was that there was not significant traffic in the Technology Park and the Board finds that there will not be a significant increase in vehicular traffic to the Property caused by adding the lunchroom use. The roads serving the Property are adequate to handle the very minor increase in volume that would be occasioned by pick-up and delivery sales of food and beverages, considering they are adequate for the current manufacturing use. Tech Court connects to Magna Way, which is the main thoroughfare to reach Route 97. The traffic to and from Route 97 is therefore contained to the Westminster Technology Park and does not impact surrounding residential areas.

22. The Board finds that there was no evidence that the proposed lunchroom use would be detrimental to the use or development of adjacent properties or the general neighborhood. The Board finds that the proposed lunchroom use, as an adjunct to the current manufacturing use and automobile sales and service special exception use, is consistent with the neighborhood and the industrial development pattern in the I-R Restricted Industrial Zone and will not change the character of the general neighborhood, considering the services required, at the time of the application, the population, density, character and number of similar uses.
23. The Applicant's compliance with the off-street parking requirements of §164-111 was raised as an issue in the case. The Applicant has a mix of uses on the Property, each requiring a parking space calculation to determine compliance. The Applicant also stores vehicles (both pre-production and post-production) in the parking lot that are the inventory of its manufacturing operation. The storage of manufacturing inventory on the Property may reduce the total space available for meeting the parking requirements, but each vehicle of manufacturing inventory does not itself require a parking spot on the Property. The Property contains 275 parking spaces. The evidence was that on average there was of 170 inventory vehicles on the Property at any given time, that inventory vehicles did not use up a full space (they could be compacted), that they have roughly 60 inside the building at any time, and the Applicant has the capacity to send more inventory off-site. The Applicant testified that it can access additional parking spaces via a private agreement with Len Stoler (a nearby business). The Applicant testified that the manufacturing inventory vehicles are not tagged and that some are kept off-site, at the rail head. The Board finds that the manufacturing inventory

vehicles are not “company vehicles” as contemplated in the parking standards of 154-111C “manufacturing establishments”.

24. There was testimony in opposition that some of the vehicle inventory had been parked on public streets adjacent to the Property. The Applicant testified that there are always plenty of vacant parking spots available on the Property notwithstanding the use of some of the parking lot area for storage of manufacturing inventory vehicles.
25. The Applicant proposes 5 parking spaces located near the outside entrance to the lunchroom (See Exhibit 11, the spots being where the vehicle shown in Exhibit 11 is parked) be dedicated for pick-up service only, with a sign indicating the spaces regulate a 15-minute limitation on parking. The lunchroom use requires 1 parking space per 4 seats, plus 1 per 2 employees. Based upon the testimony there was 52 seating capacity ($52/4=13$) and 2 employees plus delivery employees would be 1, possibly three (averaging at 4 employees, equals 2 parking spaces). Therefore, 15 parking spaces are required for the lunchroom use if it is to be public. Limiting the seating area to employees only (no indoor seating for the public in condition 1) would limit the impact of this calculation, but the ordinance is unclear by how much as the seating does exist, but will be used by employees already counted under the manufacturing and office space requirements.
26. The manufacturing use requires 1 per 1 and $\frac{1}{2}$ employees on a major shift, plus 1 per company vehicle under §164-111C. The maximum shift for employees is 90, so there are 60 required parking spaces for the manufacturing use. There appears to be at least two company vehicles.

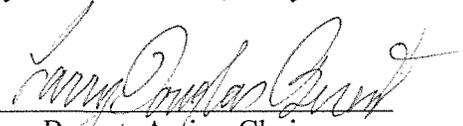
27. There is office space use on the property. The testimony was that there was approximately 30,000 square feet of office space. §164-111C requires 1 parking space per 250 square feet of office space. Therefore, the office space use on the Property requires 120 parking spaces.
28. There is also the previously granted special exception use (Case 16-01) for automobile sales, but the ordinance does not provide a specific calculation requirement for that use.
29. Based upon the testimony, there does appear to be sufficient parking spaces to meet the off-street parking requirements. There are 275 parking spaces, with the lunchroom requiring 15 parking spaces, manufacturing requiring 62 parking spaces, office space requiring 120 parking spaces. The question of whether the storage of manufacturing inventory is using up too much of the extra 78 parking spaces is a question for the Zoning Administrator to determine for zoning permit and/or zoning compliance. As a matter of whether the off-street parking space requirements are met for this special exception application, the Board finds that they have been met, so long as the condition of no on-site seating in the lunchroom is met and that sufficient parking for the lunchroom is designated in proximity to the exterior exit. The Board finds that the 5 parking spaces designated exclusively for lunchroom use are sufficient, given the condition limiting the use to tenant, employee and their guests seating and all others as carryout/deliver only.
30. Testimony in opposition suggested that there were private covenants attached to Applicant's Property which may be violated by the lunchroom use, but the covenants were not admitted into the record as they were withdrawn from submission into evidence by the party in opposition. Therefore, the Board finds that there was insufficient evidence of any private covenant restricting the use of the land that would lead to any legal reason to support the denial of the special exception request.

31. Therefore, based upon the above findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception, subject to the aforescribed conditions.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on November 1, 2016. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 2 votes in the affirmative and 1 votes against. The Board has adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 2 day of January, 2017. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland


Larry Barant, Acting Chairman

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 17-01 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 17-01, that a special exception to allow the use of the Property for a drive-through use, is hereby **GRANTED**.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The Application for special exception (Exhibit 1) was filed on January 24, 2017
2. In anticipation of the March 7, 2017 hearing, the Property was posted with a sign notice of hearing on February 10, 2017, notice was published in the Carroll County Times newspaper on February 10th and February 26, 2017, and certified letters were mailed to adjacent property owners on February 1, 2017. The agenda for the meeting included a reference to Case 17-01 and was posted on the City's website on February 3, 2017. The Board finds that the notice requirements of §164-166 have been met.
3. No request for inspection of the Property in accordance with §164-166E was received.
4. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.
5. Other than the Application for a special exception and a pre-hearing statement submitted by the Applicant, no other pre-hearing submissions were accepted into the record.

Substantive Findings:

6. The Property is located in the PRSC Planned Regional Shopping Center Zone of the City of Westminster.
7. The Applicant seeks to operate a Sonic drive-through restaurant on the Property, using a structure previously operated as a Kentucky Fried Chicken restaurant, with a drive-through service lane. There was no evidence a special exception was previously granted for the prior use. The Applicant is a lessee of the Property owner, Cranberry Mall Properties, LLC. The owner has consented to the filing of the special exception request for the Property (See Exhibit 1).
8. The Property is located on the southern portion of the Town Mall of Westminster, a 55.6 acre parcel. It is bounded on the north by the Town Mall of Westminster parking lot and buildings and north of those is MD Route 27 and the I-G General Industrial Zone of Carroll County. To the immediate south of the Property is the Cranberry Square, a Wendy's restaurant, and a Wells Fargo bank. To the immediate west of the Property is a Merchants Tire and beyond that is the B Business and I-R Restricted Industrial Zones (across from MD Route 140). To the immediate east of the Property are an Arby's restaurant and the mall parking lot and then the PD-9 Planned Development and R-10,000 residential zones.
9. As shown on the zoning data overlay photograph on page 5 of Exhibit 2, the neighborhood is typified by development consistent with a mall and commercial zone, with some residential neighborhoods and agricultural uses located outside the immediate vicinity to the east and southeast.
10. The Applicant wants to redevelop the existing structure to create a Sonic restaurant, with a drive through use (See Exhibits 4 and 5). In addition, the Applicant proposes drive-in service

in some parking spaces. The Applicant also proposes to install a ‘hop out’ door to accommodate delivery of food products to customers who cannot be served in the normal course of the drive-through aisle, to limit wait times for other customers. Pursuant to §164-101F, a drive-through eating establishment is a special exception use in PRSC Planned Regional Shopping Center Zone.

11. To qualify for a special exception for a drive through use, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for special exceptions in §164-170. There are no specific special exception requirements for a drive through use in the zoning ordinance. The Board may also consider the “criteria for determination” listed in §164-169A & B. As required by §164-171B, the application is also subject to the parking requirements of Article XVI and the distance requirement of §164-140.

12. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

13. The 2009 Comprehensive Plan includes a variety of goals related to economic development including Goal E2, Objective 3, which is to “Support the retention and expansion of existing businesses, while exploring the opportunities for new business development.” The proposed special exception use supports this goal and the general goals of the 2009 Comprehensive Plan by expanding the business use. The Applicant intends on employing 40 to 50 year round and more during the peak season (March through September). There would be approximately 25 full-time employees, with 6 working at any one time. The Board finds that the proposed use will help employ many people, serving the economic development goals of the Comprehensive Plan. The drive-through use is consistent with other uses permitted in the PRSC Planned Regional Shopping Center Zone so long as there are no adverse impacts, and there was no evidence of adverse impacts.
14. The proposed use is more than 100 feet from the nearest, adjacent lot, so the requirements of §164-140 have been met.
15. There was no evidence of any adverse impacts to the health and safety of residents or workers in the area caused by the proposed drive through use and the Board finds that it would not create such adverse impacts. There is sufficient distance from the residential uses to the east and southeast of the Property. The Property is within the limits of the existing Town Mall and the drive through matches the uses typical of a commercial mall area, including the existing neighborhood. The hours are normal commercial hours (8 a.m. to 11 p.m.-12 a.m. during the peak season of March through September). The Applicant testified that the drive through use may open as early as 6 a.m. for breakfast, but that it is unlikely to do so.

16. There was no evidence that the proposed drive through use would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not overburden such facilities. The number of people living in the area will not change. The Town Mall of Westminster is served by MD Routes 27 and 140 and North Center Street. The Applicant provided a Trip Generation Study prepared by Professional Engineering Associates which established the anticipated increase in traffic (See Exhibit 5). These roads are adequate to handle the increase in volume that would be occasioned by the drive through use and such a drive through use does not impact surrounding residential areas. The use will not overburden the water system or supply and there was testimony that the drive through restaurant would use less water than the prior use on the Property. The drive through aisle will have a by-pass lane and will be bigger than normal.
17. The Board finds that there was no evidence that the proposed drive through use would be detrimental to the use or development of adjacent properties or the general neighborhood. The Board finds that the proposed drive through use is consistent with the neighborhood and the commercial development pattern in the PRSC Planned Regional Shopping Center Zone and will not change the character of the general neighborhood, considering the services required, at the time of the application, the population, density, character and number of similar uses.
18. The required off street parking is one parking space per four seats in the restaurant, plus one parking space for every two employees. There are currently 29 parking spaces on the Property. The current restaurant configuration seats 90, but the Applicant is reducing the seating to 74. The new development will remove 12 parking spaces and add ten canopy-

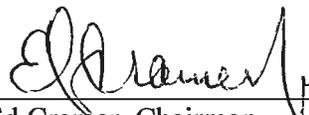
covered parking spaces (See Exhibit 4), adding two parking spaces on the north and will end up with 28 parking spaces. The Applicant testified that there will be 6 employees on a standard shift. Based upon this use, the Applicant must have 21.5 spaces and it meets that standard. In addition, the customers and employees are allowed to park in the general mall parking lot, as evidenced by a letter from the mall owner (Exhibit 3).

19. Therefore, based upon the above findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on March 7, 2017. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has adopted the findings herein and approved the passage of this 30th day of March, 2017. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland



Ed Cramer, Chairman

IN THE MATTER OF:

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BOARD OF ZONING APPEALS

**Applicant: Erik E. Barvir
Property: 113 Pennsylvania Ave.
Westminster, MD 21157**

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CITY OF WESTMINSTER, MD

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Case No. 17-03

Application for Special Exception

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* * * * *
**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 17-03 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals") on September 1, 2017, by Erik E. Barvir (the "Applicant"), owner of the property located at 113 Pennsylvania Avenue, Westminster, Maryland 21157 and more particularly described as Tax Map 0102, Parcel 1633, (hereinafter referred to as the "Property"), for a special exception pursuant to §164-170 and §164-150 of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for a conversion dwelling in the R-7,500 Residential Zone; and

WHEREAS, the Applicant's request for a special exception is made so as to allow the renovation construction necessary to convert a single-family residence into a "Dwelling, Conversion" as defined in §164-3A of the Zoning Ordinance, for two dwelling units; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on October 3, 2017, in Town Hall, City of Westminster, Maryland, to consider Application No. 17-03; and

WHEREAS, at the conclusion of the October 3, 2017 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 17-03 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 17-03, that a special exception to allow two dwelling units as a Conversion Dwelling on the Property is hereby **GRANTED, subject to one condition set forth below:**

1. That four parking spaces be constructed and maintained on the Property in accordance with §164-111C of the Zoning Ordinance.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. Certified letters were mailed to adjacent property owners on September 11, 2017. On September 6, 2017, a copy of the October 3, 2017 Board of Appeals Agenda was posted on the City's website. The Property was posted with a notice of the hearing on September 12, 2017 and notice was published in the Carroll County Times newspaper on September 10th and September 17th, 2017 in accordance with the requirements of the Zoning Ordinance.
2. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.

Substantive Findings:

3. The Applicant owns Apex Contracting, LLC, the owner of the Property at 113 Pennsylvania Avenue, Westminster, Maryland 21157. The Property consists of 11,827 square feet bounded on the east by Pennsylvania Avenue and across that street, residential development. To the

north of the Property are a residential property and then the corner of Pennsylvania Avenue and Union Street. All adjacent properties are within the R-7500 Residential Zone. To the west and south are residential properties. The Applicant is familiar with the neighborhood surrounding the Property.

4. The Property is located in the R-7500 Residential Zone of the City of Westminster.
5. The Property is currently developed with a two-story single-family residence of approximately 2,568 square feet of enclosed area above grade. The structure was built in the 1800's and an additional structure was added in the early 1900s. The current structure has been constructed as a multi-unit dwelling but there is no history of the Town having given zoning approval for such multi-unit status, and appears to have been a conversion. The two units are separated by floor; with the upper level unit having access off the Pennsylvania Avenue street level and the lower level having access on the side of the structure. The Applicant proposes to construct internal improvements to meet the Carroll County Minimum Livability Code. Internal walls will be installed and the Applicant intends to keep the structure consistent with its historical value and the historical integrity of the house. The Applicant proposes that after renovation, the first-floor unit will have three bedrooms and the second-floor unit will have three bedrooms. Each floor has a separate kitchen. A demising wall will be installed in the foyer to properly separate the units. The first-floor unit will have a side and rear entrance and the second-floor unit will have a front and two rear entrances.
6. All construction necessary to create the two dwelling units will be interior construction, with no proposed expansion of the footprint of the existing structure.
7. The Property has a garage that will have some work done on it (the Applicant proposes a new garage door) to house three parking spaces, and the Applicant proposes it has sufficient space

on the Property for a pad for a fourth parking space. The parking spaces will need to meet the dimensional requirement for four 9' x 18' parking spaces.

8. No persons testified or offered evidence against the variance or special exception requests.
9. Pursuant to §164-36B, a Conversion Dwelling is a special exception use in the R-7500 Residential Zone. A Conversion Dwelling is defined in §164-3A as:

A building existing at the time of enactment of this chapter which may be converted or altered to accommodate two or more families, as a rental facility, condominium or cooperative, subject to regulations prescribed by §164-150. Conversions shall not be defined to include additions to or expansions of existing units where not proposed in conjunction with the creation of additional units to accommodate families.”

The Applicant’s proposal meets the definition of a Conversion Dwelling, as his single-family dwelling existed at the time of the enactment of the zoning ordinance and the Applicant’s proposal seeks to convert (or maintain the conversion) the dwelling to accommodate two or more families.

10. To qualify for a special exception for a Conversion Dwelling, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for all special exceptions in §164-170 and the specific requirements for Conversion Dwellings in §164-150.
11. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(b) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in

which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”
§164-170A.

12. Unless the Applicant’s proposed use would create a site-specific adverse impact, the Applicant’s proposed use of a Conversion Dwelling is consistent with the general plan of the R-7500 Residential Zone and the Master Plan. The evidence established that there was no adverse impact caused by the proposed use. The Applicant’s proposal is consistent with the infill objectives of the 2009 Comprehensive Plan, which includes the Goal H1: Objective 2, which states: “Promote infill development and other redevelopment options on underutilized residential or commercial lots.”
13. Applicant’s proposed conversion dwelling would not adversely affect the health and safety of the residents or workers in the area. There was no evidence of adverse impacts associated with the use.
14. The Zoning Administrator testified that the Applicant’s proposed conversion dwelling would not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other improvements. There was no evidence of any adverse impact caused by the use to the public road of Pennsylvania Avenue.
15. The Applicant’s proposed conversion dwelling will not be detrimental to the use or development of neighboring properties. The neighborhood is already fully developed with infill density increases allowed by Conversion Dwellings. Existing development that meets the definition of conversion dwellings already exist in the immediate neighborhood of the Applicant’s Property and no adverse impact has been created by those uses. The Applicant’s

proposed conversion dwelling will not change the character of the existing neighborhood; instead it would be consistent with that character.

16. The Applicant has met all the requirements of §164-170 for a special exception.

17. §164-150 provides that:

“In the R-7,500, B, D-B and C-B Zones, a dwelling may be converted to provide additional dwelling units upon a finding by the Board, in addition to those required in Article XXII of this chapter, that:

A. There will be off-street parking in accordance with the parking standard for multiple-family units as provided in § 164-111C, and the location of said spaces when occupied by motor vehicles will not obstruct or impede the safe movement of vehicles and pedestrians or be parked so as to overhang in the public right-of-way.

B. The maximum number of dwelling units permitted in any conversion dwelling in the B, D-B or C-B Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 3,500. The maximum number of dwelling units in the R-7,500 Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 5,000.

C. The structure sought to be converted is not enlarged or expanded more than 30% of the floor area of the dwelling existing prior to conversion.

D. Each proposed dwelling unit shall meet the minimum square foot requirements of the Minimum Livability Code as contained in Carroll County Ordinance No. 70.”

§164-150

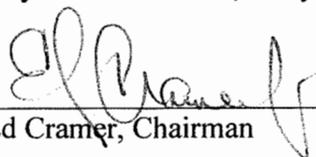
18. The Applicant proposes to construct four 9' x 18' off-street parking spaces, three within the garage and one adjacent on a pad. §164-111C would require 2 spaces for each dwelling unit that has 2 or more bedrooms, which is what the Applicant proposes. The Applicant meets the requirement of 164-150A with the proposal to build four off-street parking spaces if the spaces are provided, and which is a condition of approval. The location of the spaces when occupied by motor vehicles will not obstruct or impede the safe movement of vehicles or pedestrians.

19. The Property consists of 11,827 square feet. Dividing that by 5,000 as required in §164-150B results in 2.37, and therefore Applicant's proposal to have two dwelling units meets the §164-150B standard.
20. The Applicant does not propose to enlarge or expand the floor area of the dwelling at all, so the requirement of §164-150C is met.
21. The internal construction of the Applicant's proposed two dwelling units must meet the Carroll County Minimum Livability Code. Applicant proposes that for each unit, the bedrooms will be at least 70 SF, the kitchen will be at least 50 SF, the living room will be at least 120 SF and the dining room will be at least 80 SF. See also Exhibit 3 and Exhibit 4.
22. The Applicant has met all the requirements of §164-150 for a special exception.

IT IS SO ORDERED

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearings held on October 3, 2017. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's variance and special exception request, this 10th day of November, 2017. This Resolution and Order shall become effective upon its passage.

Zoning Board of Appeals,
City of Westminster, Maryland



Ed Cramer, Chairman

	*	
IN THE MATTER OF:	*	BOARD OF ZONING APPEALS
Applicant: Angela Zepp-Million	*	CITY OF WESTMINSTER, MD
Property: 925 Wampler Lane	*	Case No. 18-01
Westminster, MD 21158	*	
Application for Special Exception	*	

* * * * *

**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 18-01 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals") on November 9, 2017, by Angela Zepp-Million (the "Applicant"), owner of the property located at 925 Wampler Lane, Westminster, Maryland 21158 and more particularly described as Tax Map 0101, Grid 0020, Parcel 20541, Lot 11 (hereinafter referred to as the "Property"), for a special exception pursuant to §164-30G and §164-170 of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for a day-care facility for up to eight children in the R-10,000 Residential Zone; and

WHEREAS, the Applicant's request for a special exception is made so as to increase from 6 to 8 the number of children who can be served by an existing day-care facility on the Property; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on January 9, 2018 in Town Hall, City of Westminster, Maryland, to consider Application No. 18-01; and

WHEREAS, at the conclusion of the January 9, 2018 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 18-01 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 18-01, that a special exception to allow a day-care facility for up to 8 children on the Property is hereby **GRANTED**.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. Certified letters were mailed to adjacent property owners on November 28, 2017. On December 8, 2017 a copy of the January 9, 2018 Board of Appeals agenda was posted on the City's website. The Property was posted with a notice of the hearing on December 15, 2017 and notice was published in the Carroll County Times newspaper on December 17th and December 24, 2017 in accordance with the requirements of the Zoning Ordinance.
2. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.

Substantive Findings:

3. The Applicant and Robert N. Sprinkle, Jr. own the Property at 925 Wampler Lane, Westminster, Maryland 21158. The Property consists of .17 acres bounded on the east by Wampler Lane and across that street, residential development. The property is surrounded by residential development and all adjacent properties are within the R-10,000 Residential Zone. The Applicant is familiar with the neighborhood surrounding the Property.
4. The Property is located in the R-10,000 Residential Zone of the City of Westminster.
5. The Property is currently developed with a single-family residence from which, in addition to living in the residence, the Applicant currently operates the Loving Start Family Day-care that serves 6 children and has done so for five years. The Applicant's day-care serves the children

of teachers and focuses on meeting teacher's childcare needs. The Applicant proposes no new construction and wishes to increase the service capacity of the day-care to 8 children, which requires a special exception. The Applicant anticipates an immediate need for capacity to serve 6 full time children and 2 who are only after-school care. The Applicant anticipates needing the capacity in August.

6. The Applicant proffered that she meets the Maryland State Requirements which are subject to separate licensing, including the 35 SF per child requirement being met as her area for the day-care is 395 SF. Applicant testified that she provides a safe environment for the children on the Property. The Board notes that nothing in this grant of special exception relieves the Applicant from full compliance with the day-care licensing requirements of the County and/or State of Maryland.
7. The Property has a driveway with space available for deliveries, though the Applicant noted that customers' delivery and pickup of children are staggered due to their ages, so usually there are no more than one or two at a time, and that most were delivered at the curb, not the driveway. There was no evidence the deliveries would negatively impact neighbors.
8. No persons testified or offered evidence against the special exception requests. A letter of support was received (See Exhibit 3).
9. Pursuant to §164-30G, a family day-care serving between 6 and 8 children is a special exception use in the R-10,000 Residential Zone. A day-care facility is defined in §164-3A as:

“A place used for the reception or care for compensation of a child or children under 18 years of age or elderly persons over the age of 60 years of age for any part of a twenty-four-hour period.”

The Applicant's proposal meets the definition of a day-care facility.

10. To qualify for a special exception for a day-care facility serving up to 8 children, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for all special exceptions in §164-170.

11. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(b) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

12. Unless the Applicant’s proposed use would create a site-specific adverse impact, the Applicant’s proposed use of a day-care facility is consistent with the general plan of the R-10,000 Residential Zone and the Master Plan. The evidence established that there was no adverse impact caused by the proposed use or the increase from 6 to 8 children. The Applicant’s proposal is consistent with the quality child care objectives of the 2009 Comprehensive Plan, which includes Goal F2: which states: “Encourage the provision of quality child care services in locations that are convenient to Westminster residents and employees.”

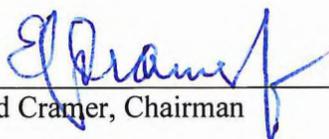
13. Applicant's proposed day-care facility serving 8 children would not adversely affect the health and safety of the residents or workers in the area. There was no evidence of adverse impacts associated with the use and no reasonable argument that adding two additional children up to 8 would create such adverse impacts. The Property can accommodate up to 8 children being served by the day-care.
14. The Zoning Administrator testified that the Applicant's proposed day-care facility serving 8 children would not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other improvements. There does exist a temporary water suspension in the City of Westminster so the operation increasing to 8 children would need to obtain an increased water allocation. There was no evidence of any adverse impact caused by the use to the public road of Wampler Lane.
15. The Applicant's proposed day-care facility serving up to 8 children will not be detrimental to the use or development of neighboring properties. The neighborhood is already fully developed residential development. The Applicant proposes no additional construction and none is required for the requested use. The Applicant's proposed day-care facility going from 6 to 8 children served will not change the character of the existing neighborhood.
16. The Applicant has met all the requirements of §164-170 for a special exception.
17. The Board finds that the Applicant's proposed use does not need to meet the requirements of §164-140 which imposes a 100' distance requirement from any other residential lot. That section is inapplicable to the Applicant's special exception use and while there is some ambiguity as to the scope of §164-140, a plain reading of the intent of that section could not be construed to apply to the Applicant's use.

18. The Applicant has a typical driveway that appears to meet the residential property requirements of two parking spaces. The driveway is accessible to the Applicant's customers all day and there is sufficient space for child deliveries and pickups. There have been no complaints. Pursuant to §164-171 B, the Applicant's proposed use must meet the City's off-street parking requirements in Article XVI. That article does not impose additional off-street parking requirements specific to a day-care facility. The Board finds that the Applicant has met the requirements for parking. A home occupation is a separately defined use from a day-care facility and it is reasonable to conclude that a day-care facility which is limited to 8 children is deemed by the legislative scheme to impose an insignificant impact on traffic flow and parking requirements such that a residential driveway use is sufficient.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearings held on January 9, 2018. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's variance and special exception request, this _____ day of February, 2018. This Resolution and Order shall become effective upon its passage.

Zoning Board of Appeals,
City of Westminster, Maryland


Ed Cramer, Chairman

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on March 6, 2018 in Town Hall, City of Westminster, Maryland, to consider Application No. 18-02; and

WHEREAS, at the conclusion of the March 6, 2018 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 18-02 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 18-02, that a special exception to allow an indoor dog training and event facility on the Property is hereby **GRANTED, subject to the following condition:**

(a) Lots 4, 5 and 6 shall meet the specifications and conditions for resubdivision and shall be resubdivided, in whole or in part, into one lot to be identified as Lot 5A comprising approximately 5.44812 acres.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. Certified letters were mailed to the subject property owner and adjoining property owners on February 14, 2018. A copy of the March 6, 2018 Board of Appeals agenda was posted on the City's website on February 9, 2018. The Property was posted with a notice of the hearing sign on February 13, 2018 and notice was published in the Carroll County Times newspaper on February 14th and February 25, 2018 in accordance with the requirements of the Zoning Ordinance.

2. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.

Substantive Findings:

3. The Applicant resides at 2402 Black Rock Road, Hanover, Pennsylvania 17311 and was represented by Kelly J. Shaffer, Esquire at the hearing. Applicant currently operates a dog training facility (My K9 Buddy) in Westminster and would like to move and expand her business to the Property. Applicant began training dogs in 1999, opened a business to train dogs in Hanover, PA in 2003, and moved her business to Westminster in 2010.
4. Applicant is a contract purchaser (See Exhibit 1) of the Property. Lots 4 and 5 are currently owned by Triple M, LLC, c/o Charles J. Miller, III, 3514 Basler Road, Hampstead, Maryland 21074. Lot 6 is owned by Jacobs Ridge, LLC, 821 Tall Grass Rd, Westminster, Maryland 21157.
5. During the hearing a question arose whether the property owner of Lot 6 was included in the consent to the application for special exception. The Applicant testified that Jacobs Ridge, LLC had consented to the special exception application and the company is, like Triple M, LLC, controlled by Charles J. Miller, III or his wife. Andrew Gray, Comprehensive Planner for the City of Westminster, testified that a certified mail was sent to Jacobs Ridge, LLC (giving notice of the case) and that Katherine Miller had signed the certified mail receipt card (See Exhibit 11 showing the card as mailed). Given that the owners of the Properties will need to be parties to the anticipated resubdivision of the Property which is a condition of this special exception approval, thereby protecting its interest, and based upon the testimony and the green card, the Board finds that there is sufficient evidence of the owner of Lot 6 consenting to the Application.

6. The Property is located in the I-R Restricted Industrial Zone of the City of Westminster. The surrounding zoning for the subject neighborhood of the Property is I-R to the North (by both Carroll County and the City of Westminster, C-Conservation, R-20,000 Residential and I-R Restricted Industrial to the south, C-Conservation by the City and I-R Restricted Industrial by the County and the City to the east, and C-Conservation, R-20,000 Residential, and I-R Restricted Industrial to the west.
7. After resubdivision into the proposed Lot 5A, the Property will consist of approximately 5.44812 acres bounded on the north by the remainder Lot 4A and further to the north, Meadow Branch Road and the Carroll County Regional Airport. (See Exhibit 6). There was testimony that the Airport wants Lot 4 and part of Lot 5 (the remainder not used by the Applicant) and this area will remain grass. The proposed Lot 5A will be bounded on the east by Kriders Church Road, from which it will gain vehicular access with two access points. To the west of the proposed Lot 5A will be undeveloped field and beyond that, Shelter Systems (a commercial-industrial use). On the western portion of the resubdivided Lot 5A Applicant proposes vegetative screening, grass and a pathway (See Exhibit 3). The far western portion of that will be subject to a forest conservation easement. To the south of proposed Lot 5A is undeveloped land in the I-R Restricted Industrial Zone and beyond that (outside the Meadowbranch Industrial Park, residential development typified by single-family dwellings.
8. The Property is currently un-developed. The Applicant proposes to construct a one-story commercial-industrial style building of approximately 160' x 250', containing a classroom, a small room for office and storage, and the bulk of the space is open area for dog-related events. (See Exhibits 3 and 6). The proposed building will be surrounded by a parking lot consisting of 274 parking spaces and drive aisles. A grass and landscaped dog walkway path is to be

constructed to the west of the parking lot. The proposed area of development is 172,251.42 sq. ft.

9. The use of the building proposed by the Applicant is to train dogs in obedience and agility, and to offer the space to other “hosts” as independent contractors to hold classes and events. The size of the facility is necessary to accommodate events. There was testimony that there is a need for such a facility in the area for clubs and that it would be a tourist draw from the surrounding five states. The hours of operation would be Monday through Thursday from noon to 9 p.m., with longer hours on Friday, Saturday and Sunday. Events would have hours of operation from 8 a.m. to 5 p.m. The peak capacity is to be anywhere from 250 to 300 people. There would be a manager on the property. Outdoor activities would include the dog walking area to the west and occasionally in the appropriate season, Applicant may want to erect a temporary pool for “dock diving” events on a weekend, though this was considered more of a wish list option for the future. The building would not have fixed or bleacher seating and all guests would be standing only (though Applicant testified they often bring their own temporary chairs).
10. The proposed indoor dog training and event facility would have the owner, two employees, and seven sub-contractors operating the facility at peak times.
11. Pursuant to §164-54L (enacted by Ordinance 873-See Exhibit 2), an indoor dog training and event facility is a special exception use in the I-R Restricted Industrial Zone. An indoor dog training and event facility is not defined by the Zoning Ordinance but the Board finds that the Applicant’s proposed use meets the ordinary meaning of that use as envisioned in the Zoning Ordinance.

12. To qualify for a special exception for an indoor dog training and event facility, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for all special exceptions in §164-170.

13. §164-170A requires a finding that:

“1.The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(b) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

14. Unless the Applicant’s proposed use would create a site-specific adverse impact, the Applicant’s proposed use of an indoor dog training and event facility is consistent with the general plan of the I-R Restricted Industrial Zone and the Master Plan. The Applicant’s proposal is consistent with the economic development objectives of the 2009 Comprehensive Plan, which includes Goal E2, Objective 3, which states: “Support the retention and expansion of existing businesses, while exploring opportunities for new business development.” There was substantial testimony from a number of citizens in support of the Applicant’s proposal and relating to the need for such a use and that it would draw people from neighboring counties to use such a facility, evidence that the economic development

goals of Comprehensive Plan element will be served. There was no testimony about any site-specific adverse impacts, though the impact of increased traffic on residential roads south of the Property was raised as a concern by Joe Lafferty, with an allegation of collateral harm to his residential property value. Mr. Dan Staley, a licensed land surveyor who has previously been accepted as an expert by the Board and other agencies and courts, and who was accepted by the Board as an expert in land planning issues in this case, testified that in his opinion the roads in the area were newly constructed and met the criteria for industrial uses. Mr. Staley also testified that there would be no adverse peak hour's impact and that the parking proposed by the Applicant was more than sufficient to handle the anticipated occupant loads. Mr. Staley testified that the Applicant's proposed use is typical of those in the neighboring properties, and less intense than other industrial uses in the area. The Board finds that the size and scale of the indoor dog training and event facility is not such that the use would exceed the normal and expected impacts to public roads in comparison with any of the other permitted uses in the I-R Restricted Industrial Zone, as identified in §164-53. Given the size and scale of permitted uses in the I-R Restricted Industrial Zone, a facility with a peak customer load of approximately 300 people, and a more typical load of much fewer people, would not negatively impact the use of the public roads in the area. The Property is within an industrial park, with many uses anticipated to include traffic. The Property is very close to the regional airport. There is nothing in the record to suggest this use would impose higher than normal burdens on the existing public roads. The Board finds that the Applicants proposed indoor dog training and event facility does not adversely impact the general plan for the physical development of the district in which it is located.

15. There was no evidence that the location of the Applicant's proposed indoor dog training and event facility would adversely affect the health and safety of the residents or workers in the area. The dogs' excrement will be collected from the outside dog walking areas by users and will be disposed of in the dumpster. The intensity of the use is no greater than otherwise allowed in the I-R Restricted Industrial Zone.
16. The Zoning Administrator testified that the Applicant's proposed indoor dog training and event facility would not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other improvements. There is a temporary water suspension in the City of Westminster so the Applicant would need to obtain a water allocation. The Applicant testified that she had made arrangements to obtain a water allocation. There was no evidence of any adverse impact caused by the use to the public road of Kriders Church Road on the road itself and there was testimony it is a relatively new road. There is already a fire hydrant installed near the intersection of Kriders Church Road and Meadow Branch Road.
17. The Applicant's proposed indoor dog training and event facility will not be detrimental to the use or development of neighboring properties or change the character of the general neighborhood in which the use is proposed. The use is to be located in an industrial park. While the industrial park does abut residential development, that residential development is sufficiently far from the Applicant's proposed use to suffer any direct adverse impacts from the proposed use. Any increase in traffic is no greater than would be anticipated from any of the permitted uses available in the I-R Restricted Industrial Zone. There was no evidence of adverse impacts on the other industrial uses in the neighborhood, nor is it reasonable to

conclude that there could be some. An indoor dog training facility will have no impacts to the other current industrial uses in the neighborhood, including the airport.

18. The Applicant has met all the requirements of §164-170 for a special exception. There are no specific standards required for the proposed use.
19. Pursuant to §164-171B, the Applicant must also meet the parking requirement of §164-111 to obtain a special exception. The Applicant proposes 274 parking spaces, of which 11 are for longer trailer-sized or RV vehicles. The staff recommended that the 'recreation facilities and centers' standard of §164-111 is applicable and the Board agrees. That use requires one parking space per 4 persons of the occupancy, plus one per employee and one per facility vehicle. The Applicant testified that the occupancy capacity would be 300, that there would be she and two employees, plus 7 independent contractors, and that no company vehicles will be kept on site. The Board finds that the Applicant's proposed parking has far exceeded the requirements for parking.
20. Pursuant to §164-121D, signs for special exception uses must meet the standards of the article and approved by the Board of Appeals upon granting a special exception. Such signs may be attached to the building as the Applicant proposes, but shall not exceed 32 square feet in size. Applicant proposes two signs on the building, one giving the company name and one with the building name (See Exhibit 4). The dimensions of the company name sign (for My K9 Buddy) is shown on Exhibit 5 as 2'4" x 8'4" which totals less than 20 square feet. The dimensions of the building name are incorrectly shown on Exhibit 4, and Applicant submitted Exhibit 9 to clarify that building name sign is 2'x 16', or 32 square feet. The Board finds that the Applicant's proposed signs meet the dimensional requirements of §164-121D and that any lighting of the signs will not cause glare onto neighboring residential properties as they are

way too far away. The Board finds the signs will be consistent with the character of the neighborhood, which includes industrial uses in the I-R Restricted Industrial Zone and neighboring commercial and residential zones, with such residential uses far away from the proposed use. The Board finds that the Applicant's proposed signs would not violate any of the general regulations of §164-119.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearings held on March 6, 2018. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 2 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's variance and special exception request, this 6th day of April, 2018. This Resolution and Order shall become effective upon its passage.

Zoning Board of Appeals,
City of Westminster, Maryland



Ed Cramer, Chairman

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IN THE MATTER OF: * **BOARD OF ZONING APPEALS**

Applicant: Michael Brecker, on behalf of * **CITY OF WESTMINSTER, MD**
LMJB Properties, LLC

* **Case No. 18-06**

Property: 269 East Green Street
Westminster, MD 21157 *

Application for Special Exception *

* * * * *

**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 18-06 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals") on November 1, 2018, by Michael Brecker (the "Applicant"), on behalf of the owner of the property, LMJB Properties, LLC, located at 269 East Green Street, Westminster, Maryland 21157 and more particularly described as Tax Map 0107, Parcel 678, (hereinafter referred to as the "Property"), for a special exception pursuant to §164-45.9(10), §164-170 and §164-150 of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for a conversion dwelling in the D-B Downtown Business Zone; and

WHEREAS, the Applicant's request for a special exception is made so as to allow the renovation construction necessary to convert a single-family residence into a "Dwelling, Conversion" as defined in §164-3A of the Zoning Ordinance, for two dwelling units; and

WHEREAS, after due notice, public hearings were held by the Board of Appeals on December 4, 2018 and January 8, 2019, in Town Hall, City of Westminster, Maryland, to consider Application No. 18-06; and

WHEREAS, at the conclusion of the January 8, 2019 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 18-06 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 18-06, that a special exception to allow two dwelling units as a Conversion Dwelling on the Property is hereby **GRANTED**, subject to one condition set forth below:

1. Applicant shall ensure that the Property and the dwellings created by authority of this special exception meet all requirements of the Carroll County Minimum Livability Code.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. Certified letters were mailed to the property owner and adjacent property owners on November 12, 2018. On November 9, 2018 a copy of the agenda of the Board of Appeals was posted on the City's website for the December 4, 2018 hearing. On December 11, 2018, a copy of the agenda of the Board of Appeals was posted on the City's website for the January 8, 2019 hearing. The Property was posted with a notice of the hearing on November 13, 2018 and notice was published in the Carroll County Times newspaper on November 11, 2018 and November 18, 2018 in accordance with the requirements of the Zoning Ordinance.
2. The Board held a hearing on December 4, 2018. The Applicant was absent. By telephone call to the Applicant it was disclosed that Applicant was unaware that he needed to attend the hearing. Upon a motion for continuance to set a new hearing date of January 8, 2019 that was

duly seconded, the Board voted 2-1 to grant a continuance and reschedule the hearing to January 8, 2019.

3. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.

Substantive Findings:

4. The Applicant owns LMJB Properties, LLC, the owner of the Property at 269 East Green Street, Westminster, Maryland 21157. The Applicant also owns real estate at 270 and 271 East Green Street, which are developed with commercial development. The Property consists of 11,880 square feet bounded on the west by East Green Street Avenue. To the north of the Property is South Bishop Street. All adjacent properties are developed with commercial development and are within the D-B Downtown Business Zone. Within one block to the west of the Property begins the R-7500 Residential Zone, which includes some residential development. Further away (3 to 4 blocks), to the south and east, are residential properties within the R-7500 Residential Zone. The Applicant is familiar with the neighborhood surrounding the Property. Most of the residential dwellings near the Property are multi-family dwellings.
5. The Property is located in the D-B Downtown Business Zone of the City of Westminster.
6. The Property is currently developed with a two-story single-family residence with an additional accessory building being used for commercial auto-repair storage during the day. The residential structure was built in the 1925. The current structure had been constructed as a multi-unit dwelling with one unit upstairs and one-unit downstairs, each with a kitchen, but that was subsequently discontinued. The Applicant wishes to restore the two units, one on each level, each with separate keyed access. The Applicant proposes to construct internal

improvements to meet the Carroll County Minimum Livability Code. Internal walls will be installed and the Applicant intends for each dwelling unit to have one bedroom, one living room, one full bath and a kitchen. All construction necessary to create the two dwelling units will be interior construction, with no proposed expansion of the footprint of the existing structure.

7. The Property has space for three parking spaces. The parking spaces will need to meet the dimensional requirement for four 9' x 18' parking spaces.
8. No persons testified or offered evidence against the variance or special exception requests.
9. Pursuant to §164-49.1(10), a Conversion Dwelling is a special exception use in the D-B Downtown Business Zone. A Conversion Dwelling is defined in §164-3A as:

A building existing at the time of enactment of this chapter which may be converted or altered to accommodate two or more families, as a rental facility, condominium or cooperative, subject to regulations prescribed by §164-150. Conversions shall not be defined to include additions to or expansions of existing units where not proposed in conjunction with the creation of additional units to accommodate families.”

The Applicant’s proposal meets the definition of a Conversion Dwelling, as his single-family dwelling existed at the time of the enactment of the zoning ordinance and the Applicant’s proposal seeks to convert the dwelling to accommodate two or more families.

10. To qualify for a special exception for a Conversion Dwelling, the Applicant must prove, by a preponderance of the evidence, that the proposed use meets the requirements for all special exceptions in §164-170 and the specific requirements for Conversion Dwellings in §164-150.
11. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission:

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area:

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(b) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

12. Unless the Applicant’s proposed use would create a site-specific adverse impact, the

Applicant’s proposed use of a Conversion Dwelling is consistent with the general plan of the D-B Downtown Business Zone and the Master Plan. The evidence established that there was no adverse impact caused by the proposed use. The Applicant’s proposal is consistent with the infill objectives of the 2009 Comprehensive Plan, which includes the Goal H1: Objective 2, which states: “Promote infill development and other redevelopment options on underutilized residential or commercial lots.”

13. Applicant’s proposed conversion dwelling would not adversely affect the health and safety of the residents or workers in the area. There was no evidence of adverse impacts associated with the use. The commercial uses will not be impacted by a conversion from one dwelling unit to two units.

14. The Zoning Administrator testified that the Applicant’s proposed conversion dwelling would not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other improvements. There was no evidence of any adverse impact caused by the use to the public road of East Green Street or South Bishop Street. The Applicant

acknowledged that he will need to apply for and receive a water and sewer allocation for the proposed additional residential unit and that there is a queue for allocations at this time.

15. The Applicant's proposed conversion dwelling will not be detrimental to the use or development of neighboring properties. The neighborhood is dominated by commercial development and further away, multi-family residential development. The Applicant's proposed conversion dwelling will not change the character of the existing neighborhood; instead it would be consistent with that character.

16. The Applicant has met all the requirements of §164-170 for a special exception.

17. The distance requirements of §164-158 are not applicable to a conversion dwelling.

18. §164-150 provides that:

“In the R-7.500, B, D-B and C-B Zones, a dwelling may be converted to provide additional dwelling units upon a finding by the Board, in addition to those required in Article XXII of this chapter, that:

A. There will be off-street parking in accordance with the parking standard for multiple-family units as provided in § 164-111C, and the location of said spaces when occupied by motor vehicles will not obstruct or impede the safe movement of vehicles and pedestrians or be parked so as to overhang in the public right-of-way.

B. The maximum number of dwelling units permitted in any conversion dwelling in the B, D-B or C-B Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 3,500. The maximum number of dwelling units in the R-7,500 Zone shall be determined by dividing the area in square feet of the lot upon which the proposed conversion dwelling is located by 5,000.

C. The structure sought to be converted is not enlarged or expanded more than 30% of the floor area of the dwelling existing prior to conversion.

D. Each proposed dwelling unit shall meet the minimum square foot requirements of the Minimum Livability Code as contained in Carroll County Ordinance No. 70.”

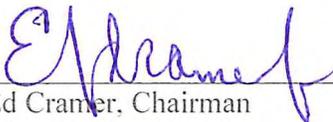
§164-150

19. The Applicant proposes to construct three 9' x 18' off-street parking spaces. The Applicant meets the requirement of 164-150A with the proposal to build three off-street parking spaces if the spaces are provided. The location of the spaces when occupied by motor vehicles should not obstruct or impede the safe movement of vehicles or pedestrians.
20. The Property consists of 11,880 square feet. Dividing that by 3,500 as required in §164-150B results in 3.39, and therefore Applicant's proposal to have two dwelling units meets the §164-150B standard.
21. The Applicant does not propose to enlarge or expand the floor area of the dwelling at all, so the requirement of §164-150C is met.
22. The internal construction of the Applicant's proposed two dwelling units must meet the Carroll County Minimum Livability Code. Applicant acknowledged that he intends that the dwelling units and property will meet the Minimum Livability Code but detailed plans were not yet prepared, so this is a condition of the Special Exception.
23. The Applicant has met all the requirements of §164-150 for a special exception.

IT IS SO ORDERED

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearings held on December 4, 2018 and January 8, 2019. After said public hearings, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 2/14 day of February, 2019. This Resolution and Order shall become effective upon its passage.

Zoning Board of Appeals,
City of Westminster, Maryland


Ed Cramer, Chairman

	*	
IN THE MATTER OF:	*	BOARD OF ZONING APPEALS
Applicants: Donna Dressel, John Dressel and Margaret D. Rase	*	CITY OF WESTMINSTER, MD
	*	Case No. 19-01
Property: 19 North Court Street Westminster, MD 21157	*	
Application for Special Exception	*	

* * * * *

**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 19-01 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals") on February 5, 2019, by Donna Dressel, John Dressel, and property owner, Margaret D. Rase (owned jointly with Edgar L. Rase) (hereinafter jointly the "Applicants"), on behalf of the property located at 19 North Court Street, Westminster, Maryland 21157 and more particularly described as Tax Map 0107, Parcel 1104, (hereinafter referred to as the "Property"), for a special exception pursuant to §164-45.9A(12), §164-155.3 and §164-170 of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for firearms sales in the D-B Downtown Business Zone; and

WHEREAS, the Applicants' request for a special exception is made so as to allow the sale of firearms at an existing commercial retail gun training and retail sales of miscellaneous equipment and accessories; and

WHEREAS, after due notice, public hearings were held by the Board of Appeals on March 5, 2019 and April 2, 2019, in Town Hall, City of Westminster, Maryland, to consider Application No. 19-01; and

WHEREAS, at the conclusion of the April 2, 2019 hearing, the record was closed; and

WHEREAS, at said public hearings the Applicants made a presentation with respect to Application No. 19-01 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 19-01, that a special exception to allow firearms sales on the Property is hereby **GRANTED**.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. Certified letters were mailed to the property owner and adjacent property owners on February 8, 2019. On February 7, 2019 a copy of the agenda of the Board of Appeals was posted on the City's website for the March 5, 2019 hearing. The Property was posted with a notice of the hearing on February 8, 2019 and notice was published in the Carroll County Times newspaper on February 10, 2019 and February 17, 2019 in accordance with the requirements of the Zoning Ordinance.
2. The Board held a hearing on March 5, 2019. The Applicants made a presentation in support of the Application. In addition, one citizen witness testified against granting the special exception requested by the Applicants and one citizen witness testified in favor. During the hearing, the Board closed the hearing from 6:43 p.m. to 6:53 p.m. in accordance with §3-305(b)(7) of the General Provisions Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice on a legal matter. At the conclusion of the March 3, 2019 testimony there were many questions about the industry standards referred to in §164-155.3. The Applicants were advised that the Board would benefit from testimony of experts to

identify and describe compliance with the industry standards referred to in §164-155.3. Upon a motion for continuance to set a new hearing date of April 2, 2019 that was duly seconded, the Board voted 3-0 to grant a continuance and reschedule the hearing to April 2, 2019.

3. At the April 2, 2019 hearing the Applicants were represented by Phillip W. Wright, Esquire.
4. During the April 2, 2019 hearing two evidentiary rulings were made. The first was to exclude an email received by the Zoning Administrator to the Board (delivered by Andrew Gray, Comprehensive Planner) with respect to the case which was excluded as hearsay testimony not subject to the right of cross-examination. The second was to exclude a letter submitted by the Applicants from Senator Reidy which was also excluded as hearsay testimony not subject to the right of cross-examination.
5. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.

Substantive Findings:

6. The Applicants Donna Dressel and John Dressel have operated a firearm training and instructional facility at the Property since October 2, 2016. Applicant Margaret D. Rase is a joint owner of the property at 19 North Court Street, Westminster, Maryland 21157 and joined in the application. The Property consists of approximately 4,965 square feet. The Property is in Westminster's downtown and is surrounded by commercial and to the north and northeast, residential uses. To the north of the Property is the D-B Downtown Business, B-Business and R-7,500 Residential zones to the South and West of the Property is the D-B Downtown Business Zone. To the East is the D-B Downtown Business and R-7-500 Residential zones. All adjacent properties are developed with commercial development. Across the street from the Property the uses are typified by uses such as: Lawyers Trust Bail

Bonds, Maryland Insurance Group, McFadden Law Firm, Permanent Picture Tattoo Parlor, Thomas Hickman Attorney, Kirk Seaman Attorney, Family and Children Services, Church of the Ascension and Walsh Francis Attorney. The Applicants are familiar with the neighborhood surrounding the Property.

7. The Property is located in the D-B Downtown Business Zone of the City of Westminster.
8. The Property is currently developed with a retail store of approximately 4,290 square feet that was built in 1935. The Applicants propose only internal improvements to meet the requirements of the zoning ordinance §164-155.3, as necessary, but it did not appear from the testimony that any were needed. There is no proposed expansion of the footprint of the existing structure.
9. No evidence was submitted with respect to the parking, but none was needed because §164-155.3C exempts firearm sales uses approved under that section from the parking requirements in §164-111.
10. Other than the Applicants, one person testified or offered evidence against the special exception request, arguing that in his experience of over 35 years in the area, the area in which the Property is located is family-oriented and he objects to such uses in the D-B Downtown Business Zone and that the standards had not been met (this was prior to the April 2, 2019 testimony). One person testified in favor of the requested special exception, stating that he was a business owner in the area since 1977 and that there has never been a problem with the gun dealer's presence in the area and supports the shop as an avid shooter. He also argued in favor of a common-sense approach to defining what the industry standards referenced in §164-155.3. A third citizen merely asked a question.

11. The Applicants currently offer training and instruction in firearm safety at the Property. They also sell firearm accessories and miscellaneous retail goods. They currently display firearms for online sale but because they are not currently permitted to sell firearms from the Property, they must make arrangements for customers to order the firearms displayed (or others) online and transfer the firearms upon sale off site (outside the D-B Downtown Business zone) where they can give possession, though it is then potentially open and obvious to the public. The safety and security measures that were described to support qualification under the standards of §164-155.3 are already in place and firearms (pistols and long guns) are already displayed in the retail store, so this special exception is required to allow the actual sale of the firearms to occur within the retail store. The business is open Wednesday through Friday, 10 a.m. to 5 pm. and every other (second and fourth) Saturday from 9 a.m. to 5 p.m., as well as every five-week month there is a specialty event. Their primary business is firearms training and instructional services. They hold classes and there is a classroom component at a local firing range for the instruction in the actual use of firearms. The Applicants teach gun cleaning and care and sell miscellaneous gear, such as ammunition and targets. There are separate rooms for each function.

12. Pursuant to §164-45.9A (12), firearm sales subject to the provisions of §164-155.3 are a special exception use in the D-B Downtown Business Zone. §164-155.3A provides that “Firearm sales may be permitted as a special exception in the D-B Zone upon approval by the Board of Appeals for businesses with the primary purpose of firearms training and/or sales...” The Applicants’ proposal meets the definition of a firearms sales under this section as the retail store offers firearms training and/or sales as the primary purpose and is located in the D-B zone.

13. To qualify for a special exception for firearms sales, the Applicants must prove, by a preponderance of the evidence, that the proposed use meets the requirements for all special exceptions in §164-170 and the specific requirements for firearms sales in §164-155.3.

14. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

(a) Adversely affect the health and safety of residents or workers in the area;

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

(b) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.”

§164-170A.

15. Unless the Applicants’ proposed use would create a site-specific adverse impact, the

Applicants’ proposed use for firearms sales is consistent with the general plan of the D-B Downtown Business Zone and the Master Plan. The evidence established that there was no adverse impact caused by the proposed use. The Applicants’ proposal is consistent with the objectives of the 2009 Comprehensive Plan, which includes the Goal E2: Objective 3, which states: “Support the retention and expansion of existing businesses, while exploring opportunities for new business development.”

16. Applicants’ proposal to add in-shop firearms sales to their existing firearms training and firearms display (for online sales) would not adversely affect the health and safety of the

residents or workers in the area. There was no evidence of adverse impacts associated with the use. The commercial uses will not be impacted by firearm sales at this location and allowing firearm sales within the store renders the Applicants' workaround of online sales with delivery outside the D-B Downtown Business zone unnecessary, which should improve safety given the steps taken to meet the requirements of §164-155.3.

17. The Comprehensive Planner testified that the Applicants' proposed to add firearms sales to the existing retail business would not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other improvements. There was no evidence of any adverse impact caused by the use to the public roads.
18. The Applicants' proposed firearms sales will not be detrimental to the use or development of neighboring properties. The neighborhood is dominated by commercial development. The Applicants' proposal to add firearm sales to the existing retail business will not change the character of the existing neighborhood; instead it would be consistent with that character.
19. The Applicants have met all the requirements of §164-170 for a special exception.
20. The distance requirements of §164-149 are not applicable to a special exception for firearms sales pursuant to §164-155.3A8.
21. §164-155.3 requires findings consistent with its terms, which are:

§164-155.3. Firearms Sales in the D-B Downtown Business Zone

A. Firearm sales may be permitted as a special exception in the D-B Zone upon approval by the Board of Zoning Appeals for businesses with the primary purpose of firearms training and/or sales in accordance with the provisions of this Code, provided that the following standards and requirements are met below. The distance requirements from dwellings, schools, churches and institutions for human care are waived for firearms via an exception to §164-140 under subsection H below.

1. A loading and unloading station must be provided within the facility where firearms are to be sold. Stations shall be comprised of heavy steel enclosures to safely contain any errant round fired while loading or unloading a firearm.

2. An industry-standard alarm system must be provided. Alarm systems must be technically robust and encompass glass protection, interior and exterior doors, access panels and ducts. A panic button must be provided. The system must be externally monitored.
 3. An industry-standard video surveillance system must be provided. Video surveillance systems must include coverage of all entrances and exits, register areas, loading areas, and restricted firearms storage areas. Cameras should also be visible to the public to serve as a crime deterrent.
 4. Firearms sales facilities shall provide break-resistant doors, gates, glass, security grills and gates.
 5. Exterior and interior lighting must be provided with automatic timers to function from dusk to dawn each day.
 6. All exterior doors must have commercial-quality locks and door hardware, dead bolts, guard plates, emergency egress locks and secondary locking mechanisms.
 7. Firearms may only be displayed in high-security showcases, firearm safes, cable locks and secure stockrooms. All firearms must be removed from display and placed in secure storage during the hours the establishment is closed. A security protocol for all transfer times must be established.
 8. Firearms sales uses shall not be subject to the additional distance requirements in §164-140 (i.e. 100 feet from any property that contains a dwelling, school, church or institution for human care).
 9. Any wall abutting another structure designed or intended for human occupancy must be constructed of or faced with a bullet-resistant material.
- B. No firearms sales may be conducted in any premises on any lot that is contiguous to Main Street.
- C. Notwithstanding any other provision of the Code, firearms sales uses approved under this Section and located in an existing building shall be exempt from all parking requirements in §164-111.
- D. Notwithstanding any other provision of this Code, a special exception granted by the Board of Zoning Appeals under this Section will lapse six (6) months after the cessation of the business with the primary purpose of firearms training and/or the sale of firearms.
- E. The Westminster Police Department shall inspect the premises biennially (sic.) for compliance with the requirements of this Section.

22. The Applicants provided the testimony of two witnesses, accepted as experts by the Board, at the April 2, 2019 hearing. One was an expert in the commercial security business and in low voltage, access controls and security practices and one was an expert locksmith with decades of experience in commercial and government security lock systems. Both supplied testimony about the applicable trade practices and/or codes as the industry standards for a firearm sales location. In addition, the Applicants Donna and John Dressel have substantial experience in firearms training and safety practices.
23. The Applicants have loading and unloading stations as required by §164-155.3A(1), though firearm loading is not a part of their business practice as they have no live fire range.
24. The Applicants have an industry-standard alarm system that meets the requirements of §164-155.3A(2). The Applicants' Property is monitored 24/7 by Westminster Security. There is not simply a perimeter protection, but rings of protection, that include door sensors, motion detectors, glass breaks, and an installed Digital Monitoring Products system. There are sensors on both interior and exterior doors. Each room has motion detection. There are three panic buttons, one fixed and two portable. There are silent alarms with dispatch only, with no follow-up call because audible alarms have proven to be problematic. There is a UL rated central station monitoring with an emphasis on speed.
25. The Applicants have an industry-standard "Night Owl" video surveillance system that meets the requirements of §164-155.3A(3). The cameras are hard-wired, visible to the customers. The surveillance system covers all areas including the entrances and exits, the registers and the restricted storage area. There are no loading areas but it does cover the loading/unloading station that is required. The system consists of 10 cameras that are operated 24/7 with an average of 45 days of storage (1 terabyte of storage per camera).

26. The Applicants' Property has break-resistant doors, gates, glass security grills and gates meeting the requirements of §164-155.3A(4). On the front door it is painted as it doesn't look like bars, but they are bars. The main door is metal grated and has a push bar. They use Lexan cases that don't shatter. The hinges on the cabinets are secured and there are padlocks. One window has 1-inch bars top to bottom secured in the header with requisite separation. The second window is not barred but it is 3/8" Lexan.
27. The Applicants have exterior and interior lighting with automatic timers meeting the requirements of §164-155.3A(5). They have two large exterior lights with diffusers and both exterior and interior lights are on automatic timers.
28. The Applicants' Property has exterior doors with commercial-quality locks and door hardware, dead bolts, guard plates, emergency egress locks and secondary locking mechanisms meeting the requirements of §164-155.3A(6). The front door has a full-length roton hinge and the 60 fasteners are concealed. The steel has an expanded mesh to reinforce the door. The door uses an Astrigal weather seal and a fire-rated panic bar. They have commercial grade dead-bolts with a key on each side. The expert described them as robust and solid with the exit using a "UL rated solid steel latching with a 1-inch throw."
29. The Applicants only display firearms in high-security showcases and the eight to ten long guns are locked with cable locks. The Applicants have a Lexan display case with locks for the eight to twelve (sometimes more) handguns. The Applicants' practice is to remove all firearms and place them in secure storage when the establishment is closed. The storage safes are in a safe room. The storage safes are fire rated with electronic locks, passive bolts on all four sides and an internal relocker. The firearm safe is bolted to the cement floor and the keys are only with the owners with extra keys locked up somewhere else. The ammunition is not

reachable, it is behind the display case. They have a protocol for the cash register and a closing procedure with a double check system by the Applicants. The Applicants employ a security protocol for all transfer times. The Applicants meet the requirements of §164-155.3A(7).

30. The structure on the Applicants' Property does not abut any other structure, so the Applicants meet the requirements of §164-155.3A(9).

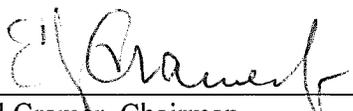
31. The Property is not on contiguous to Main Street, so the Applicants meet the requirement of §164-155.3B.

32. The Applicants have met all the requirements of §164-155.3 for a special exception.

IT IS SO ORDERED

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearings held on March 5, 2019 and April 2, 2019. After said public hearings, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicants special exception request, this 2/14 day of May, 2019. This Resolution and Order shall become effective upon its passage.

Zoning Board of Appeals,
City of Westminster, Maryland


Ed Cramer, Chairman

IN THE MATTER OF:

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BOARD OF ZONING APPEALS

Applicant: 7-Eleven, Inc.

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CITY OF WESTMINSTER, MD

Property: 353 Baltimore Blvd.
Westminster, MD 21157

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Case No. 19-03

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Application for Special Exception

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**RESOLUTION AND ORDER OF THE BOARD OF ZONING APPEALS
OF WESTMINSTER GRANTING A SPECIAL EXCEPTION PURSUANT TO THE
ZONING ORDINANCE OF THE CITY OF WESTMINSTER, MARYLAND**

WHEREAS, Application No. 19-03 was duly filed with the Board of Zoning Appeals of the City of Westminster, Maryland (the "Board of Appeals" or the "Board") on April 1, 2019, by 7-Eleven, Inc. (the "Applicant"), developer of the property located at 353 Baltimore Blvd., Westminster, Maryland 21157, the parcel being identified as Carroll County Tax Map 105, Parcel 2765, (hereinafter referred to as the "Property"), for a special exception pursuant to §164-42S, §164-149 and §164-170A of the Zoning Ordinance of City of Westminster, Maryland (the "Zoning Ordinance") for an automobile service station and a permitted use convenience store in the B Business Zone; and

WHEREAS, after due notice, a public hearing was held by the Board of Appeals on May 7, 2019, in Town Hall, City of Westminster, Maryland, to consider Application No. 19-03. At the conclusion of the May 7, 2019 hearing, the record was closed; and

WHEREAS, at said public hearing the Applicant made a presentation with respect to Application No. 19-03 and all those who desired to be heard were heard and their testimony recorded; and

NOW, THEREFORE, BE IT RESOLVED and ORDERED by the Board of Zoning Appeals of Westminster, Maryland, in response to Application No. 19-03, that a special exception to allow the use of the Property for an automobile service station is hereby **GRANTED, subject to the following condition set forth below:**

1. The Applicant shall establish screening of a similar characteristic with other screening in on the Property and consistent with the neighborhood, to be placed on the southern border of the Property of sufficient length as to screen from view of the back of the building from the adjacent property south of the Property.

BE IT FURTHER RESOLVED by the Board of Appeals that this decision is based upon the following findings:

Procedural Findings:

1. The application for special exception was filed on April 1, 2019.
2. In anticipation of the May 7, 2019 hearing, the Property was posted with a sign notice of hearing on April 11, 2019, notice was published in the Carroll County Times newspaper on April 14th and April 21, 2019, and a notice of hearing was sent via certified mail to the adjoining property owners and the subject property owner on April 10, 2019. The agenda for the meeting included a reference to Case 19-03 and was posted on the City's website on April 10, 2019. The Board finds that the notice requirements of §164-166 have been met.
3. No request for inspection of the Property in accordance with §164-166E was received.
4. The Board of Appeals takes notice of the Zoning Map of Westminster and that map is hereby adopted and incorporated by reference as a part of the record and these findings.
5. The Applicant offered evidence at the hearing in favor of the special exception request. No others testified in favor or against the special exception request.

Substantive Findings:

6. The Property is located in the B Business Zone of the City of Westminster.
7. The Applicant is the developer of the Property that consists of approximately 35,637 sq. ft. (.818 AC) for the subject use. The current owner is Getty Properties, Corp., successor in interest by merger of Axios Realty, Inc. The owner has consented to the application for a special exception.
8. The Property is currently developed with a 7-Eleven convenience store (a permitted use) which does not currently offer gasoline products or otherwise constitute a service station use.
9. The Property is located at the corner of Baltimore Blvd. (MD Route 140) and North Center Street and will have vehicular access to both roads. Both are variable-width right of ways. At the Property's location, Baltimore Blvd. is a split multiple-lane, high-traffic roadway. North Center Street is undivided, with one lane traveling west and two lanes traveling east, with the additional right turn exit lane at the corner of the Property to turn right onto Baltimore Blvd. There was evidence that there are plans to expand North Center Street at this intersection for the Westminster Shopping Center, by adding an eastbound lane (See exhibit 4c of the Traffic Impact Analysis, Exhibit 8).
10. The Property is within a highly developed commercial neighborhood. The Property is surrounded by the B-Business District. Beyond the B-Business District to the north and east, there is the PRSC: Planned Regional Shopping Center. Beyond the B-Business District to the northwest, is a C-Conservation District. Beyond the B-Business District to the south is the Westminster corporate boundary, with Carroll County zoning including BG-General Business and then further south and southeast, residential zones.

11. The neighborhood is typified by development consistent with a business district, with residential neighborhoods located to the south of the Property outside the territorial limits of the City of Westminster.
12. The Applicant proposes the complete demolition of the existing 7-Eleven Store to replace it with a 7-Eleven convenience store of 3,062 sq. ft., a 6 MPD gasoline and diesel fuel services with six dispensers covered by a canopy of 3,096 sq. ft., nineteen off-street parking spaces, underground fuel tanks, and landscaping around the perimeter (including a bio-retention facility), and a proposed sidewalk along Baltimore Blvd (an existing sidewalk along North Center Street will not be modified). Fourteen of the off-street parking are proposed to be placed in front of the convenience store, including a handicapped parking space, and five are in the northeast corner of the Property to the north of the underground fuel tanks. The gasoline service is to be located to the north of the store (between the building and North Center Street to the north) underneath the canopy. The gasoline service plan is for 6 dispensers (12 fueling positions, up to one kiosk). The Applicant proposes an 11-foot-high retaining wall on the western edge of the property line to address the 14 feet of elevation change on the Property. The proposed use is to be open 24 hours a day. No vehicle repair or vehicle storage is proposed on the Property.
13. The Property is not in direct proximity to any churches or cultural centers.
14. As set forth in § 164-42S, the service station portion of the proposed use on the Property is a special exception use in the B Business Zone.
15. Pursuant to §164-3A, Service Station, such a use is defined as:

“Any area of land, including buildings and other structures, that is used to dispense motor vehicle fuels, oil and accessories at retail, where minor repair service is incidental and where no storage or parking space is offered for rent.”
§164-3A.

16. Based upon the findings above, the Applicant's proposed use of the Property qualifies as a service station use under the definition of §164-3A.

17. To qualify for a special exception for service station, the Applicant must prove by a preponderance of the evidence that the proposed use meets the requirements of §164-149 and the general requirements for special exceptions in §164-170. The distance requirements of §164-140 are also applicable to the proposed special exception use.

18. §164-149 requires findings that:

"A. An automobile service station may be permitted upon a finding by the Board, in addition to the findings required in Article XXII of this chapter, that:

(1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.

(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of public assembly.

(3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering the service required, the population, character, density and number of similar uses.

(4) The evidence of record establishes that for the public convenience and service a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the City and that the use at the location proposed will not result in a multiplicity of proposed uses. In the absence of convincing evidence to the contrary, the following shall constitute lack of probability of a reasonable public need:

(a) An automobile service station within one mile on the same side of the road, except at intersections.

(b) The presence of two service stations within the four quadrants of an intersection, including 1/2 mile from the center of the intersection in any direction.

(5) The proposed use will be conducted upon a lot having a minimum area of 20,000 square feet, provided that this size is adequate to meet the necessary services and the setback and buffering requirements, and a minimum lot frontage of 120 feet on a public road shall be required for each automobile service station site.

(6) The lot shall contain landscaping on a minimum of 10% of the site area.

B. In addition, the following requirements shall be met:

(1) When such [use] abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted Master Plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, slightly, solid fence not less than five feet in height, together with a three-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Screening shall not be required on street frontage.

(2) Signs, products displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways shall be prohibited.

(3) Lighting shall be designed and controlled so that any light source, including the interior of a building, shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding or facing premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways or parking areas. Such lighting shall not shine on or reflect on or into residential structures.

(4) All gasoline service station developments shall meet City off-street parking standards to ensure the safe movement of vehicles and pedestrians. The arrangement of structures, islands, driveways, parking and landscaping shall be designed so as to ensure maneuvering ease, to serve the community and not to adversely affect adjacent properties.

(5) Driveways shall be designed and located to ensure a safe and efficient movement of traffic on and off the site from the lane of traffic nearest the curb. The design, location and construction of all vehicular access driveways shall be in accordance with the applicable specifications and standards of the Department of Public Works.

(6) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line, and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall normally be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb- or street line unless the Planning Director determines that those configurations would present an unreasonable risk to vehicular and pedestrian traffic and grants a modification of those requirements which would eliminate or minimize such risks. [Amended 1-28-2008 by Ord. No. 774]

(7) Vehicles shall not be parked so as to overhang in the public right-of-way.”
§164-149.

19. Eric McWilliams, an engineer and permitting specialist, was accepted as an expert by the Board. Mr. McWilliams testified that there would be no nuisance in the nature of noise, fumes, odors or physical activity by the proposed service station use. The Planning Director’s staff report noted the absence of any concerns related to the health and safety associated with the proposed special exception use. The Applicant proposes vegetative screening around the entire site with the exception of immediately behind the convenience store on the southern boundary of the Property. This screening can shield light, noise and visual effects of the use on adjacent properties and to better protect the property to the south, requires additional vegetative screening consistent with the site on the southern boundary to shield the view of the back of the convenience store. The Applicant proposes vapor recovery systems associated with the fuel service. The tanks will be double lined with an interstitial monitor, with monitors on the sump and pipes, and well, and an alarm system to alert for groundwater infiltration. The Board finds that the proposed service station use will not constitute a nuisance because of noise, fumes, odors or physical activity and that any potential for adverse impacts, if any, are no greater or more detrimental on the subject Property that would be expected on other locations within the B Business Zone. There are no residential uses

immediately adjacent to the Property and the Board finds that the required landscaping will screen any de minimis noise, odors, fumes or physical activity from the service station use. Therefore, the Board finds that the requirement of §164-149A(1) has been satisfied.

20. The Applicant provided the testimony of Michael Lenhart, of Lenhart Traffic Consulting, Inc., a professional traffic engineer who testified about the traffic impacts of the proposed convenience store/restaurant and service station use on the Property and provided a comprehensive Traffic Impact Analysis for the proposed use. The Board accepted Mr. Lenhart as an expert in traffic engineering and analysis. In Mr. Lenhart's opinion, there are no concerns regarding negative traffic impacts for the proposed development on the Property. Considering the location of the service station use on Baltimore Blvd., the proposed entrances are adequate, the proposed plan offers safe and efficient delivery of fuel and other goods, and emergency services (including fire) access will be adequate on the Property. The proposed use is expected to generate 50 or fewer new total and less than 50 new primary trips daily trips to the Property and will largely serve customers in the pool of existing traffic within the commercial area surrounding the Property.

21. The Planning Director's report recommended that the vehicular access to the Property be limited from North Center Street to consist of a "right-in-only" limiting condition for the entrance and exit access on the northern side of the of the Property. This recommendation was in the context of the anticipated widening of North Center Street. Applicant's testimony presented the opinion that this limitation was not necessary or, at the very least, was not yet necessary and that they would like to make that argument in the context of the site plan approval to better address the concerns of the State Highway Administration and/or the City of Westminster. Applicant's traffic expert testified that the split phased roadway has plenty

of site distance to allow a left-out exit and that the traffic will clear out during each of the intersection's light cycles. Page 8 of the traffic impact analysis (Exhibit 8) addresses the existing peak hour volumes for the Property and also studied the traffic patterns of the anticipated additional lane on North Center Street. The Board finds that is reasonable to allow the Applicant's to continue to make the case for a full access point on North Center Street before the City's Planning & Zoning Commission during site plan review and therefore elects not to impose the requested limitation as a condition of the special exception.

22. There was evidence that the Applicant's proposal provides adequate turning ratios to accommodate emergency services (See Page 8 of Exhibit 8) and normal traffic, including deliveries. The turning ratios exceed state standards and there is an adequate tangent between the entrances. There was no evidence that any traffic hazard or traffic nuisance would be created by the proposed service station use because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital or other public use or place of public assembly. Therefore, the Board finds that the requirements of §164-149A(2) have been met.

23. The proposed service station use on the Property will be located within areas developed with other business uses and will offer services needed by those surrounding uses. The proposed use will not create any adverse impacts on the logical development of the general neighborhood, or the B Business Zone (commercial) in which the Property is located, but instead is consistent with the development of the neighborhood and the B Business Zone.

Therefore, based upon the findings, including those in paragraphs 20 through 23, the Board finds that the requirements of §164-149A(3) have been met.

24. The Applicant offered substantial and persuasive testimony and documentation that there is a public convenience and service need for the proposed service station use. The Applicant offered Edward Steere, AICP, of Valbridge Property Advisors who prepared a market need analysis (Exhibit 9) for the proposed service station use on the Property. The Board accepted Mr. Steere as an expert in market needs analysis. To analyze the supply and demand issues, Mr. Steere defined the trade area as being centered in the Westminster communities and the MD-140 commercial corridor, drawing customers from throughout central Carroll County to the regional center of the County seat of Westminster. He identified the residents in the trade area, their income and homeownership characteristics, average vehicle miles per household and commuting characteristics. The estimated total demand within the Westminster trade area was 34.74 million gallons per year. The supply comes from 16 other gas stations that account for an existing competitive supply of 27.2 million gallons per year. The unmet trade area demand is estimated at 7.54 million gallons per year. The Board accepts the definition of the applicable market and the conclusions of Mr. Steere and the Valbridge Report (Exhibit 9).

25. Section 164-149A(4)(a) and (b) provides two standards upon which the Board must evaluate the probability of a lack of public need. The Applicant asserts that both conditions are met, as there is no active service station use within one mile and on the same side of the road as the Property and is not at an intersection, and there are not two service stations within the four quadrants of an intersection within ½ mile from the center of the intersection in any direction. With respect to the presumption standard, Applicant relies upon a Liberty station

being outside the City limits of Westminster to exclude that station from consideration. The Board finds that fact unpersuasive because that station is included within the definition of the trade area offered by the Applicant and accepted by the Board. However, the Board finds that even if a probability of public need under subsections (a) and (b) had been presented, convincing evidence was nonetheless presented in the Valbridge market analysis that a public need does exist based upon the 7.54 million gallons of unmet annual need within the trade established by the study.

26. In addition, the Board finds that competition between suppliers of gasoline (service station uses) is good for customers and is a relevant consideration as part of the public convenience and need. Competition will benefit consumers as far as convenience, price, and the range or services available. The Applicant's proposed service station use will provide added competition without providing a multiplicity of uses that would cause an adverse impact to the public. Based upon the findings in paragraphs 24 through 25 above, the Board finds that the Applicant has established that the proposed use will meet a need (of the public convenience and service), and therefore the requirements of §164-149A(4) have been met.
27. The Property for the proposed use exceeds 20,000 S.F. and the proposed frontage on Baltimore Blvd. exceeds 120 feet in length. The proposed total building floor ratio does not exceed twice the total lot area, so the dimensional requirements of §164-45A(1) will be met. Under the Applicant's proposal, the building fuel islands and canopy support structures are at least 30' from a roadway, meeting the setback limitation dimensional requirement of §164-45B(1)(a). The side line for the proposed use along an alley or public right of way is over 10' so the requirement of §164-45B(1)(b) is met. All the proposed off-street parking is 10' from the right-of-way or adjacent lots so the 5' limitation of §164-45B(1)(c) is met. The building

will be over 30 feet from any residential zone and therefore the requirement of §164-45B(1)(d) is met. The landscaping buffering requirements can be met. Based upon the foregoing, the dimensional and buffering requirements can be met for the size of the Property, and therefore the requirements of §164-149(5) have been met.

28. There is enough land on the Property to meet the 10% landscaping requirement and the Applicant will need to establish sufficient plantings to meet this requirement and the requirements of the City's Landscape Manual as part of the site plan approval process. The Applicant's plan shows significant perimeter landscape plantings.
29. The Property does not abut a residential zone, so the requirements of §164-149B(1) are not applicable to the resolution of the Application. There is no natural terrain feature on the southern boundary that would provide screening of the proposed building. Screening of the southern boundary of the Property is important to mitigating noise, sight and light trespass impacts to the adjacent property. The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.
30. There was insufficient evidence for the Board to evaluate the adverse effect of signs, products, displays or other obstructions on the visibility at the intersections or to the service station's driveways, which are prohibited by §164-149B(2). The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.
31. There was insufficient evidence for the Board to evaluate the adverse impacts of lighting on surrounding or facing premises or the safe vision of operators of vehicles moving on Baltimore Blvd, and North Center Street said adverse impacts being prohibited by §164-149B(3). The Planning Director's staff report notes that a photometric plan will be evaluated

during the site plan review process. The Applicant shall meet this requirement as a condition of the granting of the special exception, via the site plan approval process.

32. The Applicant's plan and testimony established that the design and location of driveways ensure safe and efficient movement of traffic on and off the site from the lane of traffic nearest the curb and that the design, location and construction of the vehicular access driveways are in accordance with the applicable specifications and standards of the Department of Public Works, as required by §164-149B(5). The Planning Director's staff report notes the staff and the State Highway Administration's recommendation is for a right-in only site entrance from North Center Street, which we have addressed in previous findings. The Applicant can address this requirement issue more fully via the site plan approval process.

33. The Applicant's proposal places the fuel service pumps and canopy 30 feet from the property line, which is even further from the beginning of the Baltimore Blvd. and North Center Street rights-of-way. Section 164-149B(6) requires that the pumps or other service appliances shall be located on a lot at least 10 feet behind the building line. The building line is 30 feet from the lot line, so the pumps and canopy placement meet the requirement of §164-149B(6). The driveways are over 20' from each other as they access the street. Section 164-149B(6) also requires that driveways be perpendicular to the curb or street, unless the Planning Director determines that those configurations would present an unreasonable risk to vehicular or pedestrian traffic and grants a modification. This requirement has been met. The Applicant has met the requirements of §164-149B(6) with respect to the pump or service appliance distance from the building line and the 20-foot minimum distance requirement.

34. There is no planned parking area which would overhang in the public right-of-way, so the requirement of §164-149B(7) has been met. Section 164-171B requires that the parking requirements of § 164-111C be met. A service station use requires 2 spaces per bay and 1 space per employee shift. There are no service bays proposed for the Applicant's service station use. The convenience store would fall under the general commercial establishments devoted to retail sales not otherwise listed in the use chart, thus requiring 1 space per 250 square feet of floor area used for retail sales, trade or merchandizing and 1 for each 300 square feet for office, storage or other purposes. The proposed convenience store is 3,062 square feet, thus requiring 15 parking spaces. The Applicant proposes 19 parking spaces. The Board finds that the Applicant meets the parking requirements of §164-111.

35. The proposed automobile service station use (including its convenience store) is more than 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, church or institution for human care. Therefore, the proposed service station use complies with the requirements of §164-140 of the Zoning Ordinance.

36. §164-170A requires a finding that:

“1. The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission;

2. The proposed use at the location selected will not:

- (a) Adversely affect the health and safety of residents or workers in the area;
- (b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or
- (c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

3. The standards set forth for each particular use for which a special exception may be granted have been met.” §164-170A.

37. As described in the 2009 Comprehensive Plan, the B Business Zone along Maryland Route 140 (Baltimore Blvd.) is typified by “...significant commercial activity during both day and evening hours, including weekends. MD 140 is a divided, multi-lane highway with good vehicular access. However, there are some traffic congestion problems during peak hours due to numerous access points along the highway and traffic signals at the major intersections.” See Chapter 9, Economic Development, Part 1 Business Patterns, Section 2: Maryland Route 140. The 2009 Comprehensive Plan sets goals including Goal E2, Objective 3, which reads: “Support the retention and expansion of existing businesses, while exploring opportunities for new business development.” The 2009 Comprehensive Plan also discusses the type of infill development proposed by the Applicant on this Property, which remains vacant, when it states: “There are many opportunities for redevelopment and infill along MD 140. The Property is located in a commercial area which has design criteria necessary to accommodate automobile access and high traffic volumes. See 2009 Comprehensive Plan, Chapter 5 Land Use, Part 6 Land Use Designations, Commercial. The Board finds that the proposed service station use, a use made in conjunction with the permitted use of a convenience store, is consistent with the typical uses of the B Business Zone and is consistent with, and will not adversely affect, the general plan of development of the B Business Zone.

38. There was no evidence of any adverse impacts to the health and safety of residents or workers in the area caused by the proposed service station use and the Board finds that it would not create such adverse impacts. The redevelopment of the current convenience store building (which is over 40 years old) will improve the layout of Property in the context of the commercial neighborhood. There was no evidence that noise, fumes, or other nuisances

would be created by the use. The storage tanks and fuel service pumps are heavily regulated and safety concerns are best met through those regulatory processes. The screening required by §164-149B(1) should mitigate any affects normally associated with a service station use on the neighboring properties south of the Property. Additional screening of the back of the convenience store on the southern boundary of the Property will provide additional mitigation to any effects on properties to the south. There was evidence that the plan would improve the use of the Property over the current use and its configuration.

39. There was no evidence that the proposed service station use would overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements and the Board finds that it would not. The number of people living in the area will not change. The road serving the Property appears to be adequate to handle volume of traffic that would utilize the proposed service station use, though the impact of traffic on the roads, along with storm drainage, stormwater management, and related development issues will remain a consideration during site plan review by the Planning & Zoning Commission. The Applicant acknowledged that it will need to address public water allocations in the permitting process.

40. The Board finds that there was no evidence that the proposed service station use would be detrimental to the use or development of adjacent properties or the general neighborhood. There was testimony that the use would not create noise or other health and safety adverse impacts over and above a use commonly expected by a service station use on this Property. The Board finds that the proposed service station use is consistent with the overall neighborhood and the commercial development pattern in the B Business Zone and will not

change the character of the general neighborhood, considering the services required, at the time of the application, the population, density, character and number of similar uses.

41. The Board finds that the proposed service station use will be consistent with the orderly growth of the community, a factor which may be considered by the Board pursuant to §164-169B(2).

42. Therefore, based upon all the previous findings, the Board finds that the Applicant has met its burden of proof and is entitled to an approval of its application for a special exception.

IT IS SO ORDERED.

AS CERTIFIED by the Chairman's signature below, the Board of Zoning Appeals has adopted this Resolution and Order after the public hearing held on May 7, 2019. After said public hearing, the Board voted in favor of granting the special exception, by a vote of 3 votes in the affirmative and no votes against. The Board has unanimously adopted the findings herein and approved the passage of this Resolution and Order granting the Applicant's special exception request, this 8th day of July, 2019. This Resolution and Order shall become effective upon its passage.

Board of Zoning Appeals,
City of Westminster, Maryland



Ed Cramer, Chairman

