

**Town of Riverdale Park, Maryland  
Resolution 2015-R-11**

**A resolution concerning: Special Permit 150003, an application to  
renovate 6315 Baltimore Avenue into a 7-Eleven store**

**Introduced by: CM Jonathan Ebbeler**

**Date Adopted: July 6, 2015**

**Date Effective: July 6, 2015**

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WHEREAS, 7-Eleven proposed in October 2014, to majorly renovate 6315 Baltimore Avenue in Riverdale Park so as to convert it into a 7-Eleven store, AND

WHEREAS, 6315 Baltimore Avenue is in the Riverdale Park Mixed-Use Town Center (M-U-TC) zone as established in 2004, AND

WHEREAS, the Riverdale Park M-U-TC Local Design Review Committee (LDRC) in December 2014 recommended denial of the application based on apparent lack of compliance with more than a dozen mandatory design standards in the M-U-TC Development Plan (“the Development Plan”), AND

WHEREAS, 7-Eleven, as part of the Special Permit process that allows for appeal of a decision of the LDRC, presented modified plans that addressed a high fraction of the apparently violated mandatory design standards, and complied with many other standards that were not mandatory, AND

WHEREAS, the Town Council of Riverdale Park is allowed to make a recommendation for approval, approval with conditions, or denial of the application as submitted,

THEREFORE, BE IT RESOLVED, that the Town Council of Riverdale Park recommends denial of the application for Special Permit 150003 for the reasons detailed below.

**Background and History**

While we do not want to delve too deeply into the history of this project, as we are focused on the Special Permit application before us, there are some statements in the July 1 “Supplemental Justification Statement” (SOJ, attached) that need to be addressed. We agree with the statements in that document that the applicant has met with the LDRC, Town Council, and other stakeholders on multiple occasions, and has worked to address the concerns of all parties with modifications to the plans. We however object for the record in the late submission of the modified SOJ and argue it should have been part of

the original submission, not submitted on the last business day before the Town Council could take a position and well after the LDRC had reviewed the application for compliance.

The first statement that requires addressing is the statement in the SOJ that "...the Riverdale Park LDRC erred when it reviewed this application for full compliance of the development standards..." The materials submitted to the LDRC in the fall of 2014 and reviewed by the LDRC in the fall of 2014 and additionally with the updates submitted as part of the Special Permit on June 10, 2015, both contained the "30 square foot...building addition" which, if you add to the Building Area Calculation table of the Supplemental Justification Statement, show that both the 250 square foot and 15 % increase in GFO thresholds were exceeded. Hence, based on the material submitted, the only error made by the LDRC was in *not* subjecting the plan to review under all standards.

Nevertheless, even with the most recent and late removal of the "30 square foot...addition," we find additional objections in that the building survey clearly has indentations of .4' both on the east and west elevations where the old garage bays existed. The building elevations presented by the applicant do not reflect these indentations and clearly show a smooth and contiguous east and west walls. The applicant has chosen to skirt dangerously close to the 15% trigger for building placement. It is unclear even today if the applicant even with the existing modifications has met or exceeded the 15% trigger due to the inconsistent existing floor area. We can see from the elevations that the 'to-be' envisioned building does not match the survey and the applicant should explain where and how they are building within the indentations.

That being said, GFA calculations have been problematic throughout the application process (for example, the 2015-07-01 revisions vs. the 2015-05-14 Engineer-certified plan, which showed that 15 % and 250 GFA square foot increase were not exceeded, but there was an inconsistent calculation of GFA between sheet 1 and sheet 2 of the plan certified on 2015-05-14). With the new (2015-07-01) submission, the materials provided to the LDRC on June 10<sup>th</sup> exceeded both the 15 % increase and the 250 square foot increase thresholds.

The LDRC statement on the increase in GFA was not that it *was* met, but that the committee should *assume* that applicant would meet it, even if it required sawing off part of the building with a diamond saw after construction to reduce GFA. The LDRC's recommendation that the GFA be checked after construction was intended to address this concern.

Storm water management is a primary concern of the Town Council. The applicant has listed its disturbed ground as 4989 square feet and lists acreage as .473 acres on the surveyed property yet SDAT lists the property as .468 acres. The disturbed area should be verified by MNCPPC/DPIE staff for accuracy as the applicant is trying to be slightly under the 5000 square foot storm water management permit and enforcement. The town is concerned greatly about ground disturbances given the proximity of the parcel to Wells

Run and the town's primary storm water management control systems. Sediment control devices should be in place throughout the disturbances.

Additionally, The number of parking spaces required by Section 27-568 (a) may be reduced by up to a maximum of fifteen (15) percent for the purpose of fulfilling the Parking Lot Interior Planting Requirement of Section 4.3c (2) (a) of the Landscape Manual in association with the following: *“(1) Any permit for construction, alteration or use and occupancy applied for on a site within the Developed Tier, Corridor Node, or Center where existing impervious area exceeds forty (40) percent of the net lot area of the site.”* We respectfully ask that the 15% reduction in parking be applied to the parking calculations in lieu of opportunities for the applicant to provide better storm water management and environmental site design.

### **Outstanding Design Issues**

The “goal of the development plan” (Development Plan on page 26, repeated on page 28) is *“To create a human-scale town center through attractive development that creates a sense of place and supports commercial and residential vitality.”* The plan submitted is not human-scaled (it addresses automobile traffic, contrary to the goals of the Development Plan), is arguably unattractive, does not create a sense of place (this particular 7-Eleven could be in any time zone in the country), and, as proposed, will interfere with residential vitality of at the very least the three adjacent residential properties.

The use itself is not at issue here. Another food and beverage store in the M-U-TC zoning, Town Center Market, was subjected to the exact same process and standards as the applicant and was widely supported by the community due to its adherence to all development plan goals and design standards.

Mandatory vs. Flexible: the LDRC did not press on several mandatory standards that may have been violated to be flexible and reasonable, because the LDRC thought that strict application of the standards near edge of applicability of standard would not result in better building. The LDRC chose window area as a focus of comments because it was most addressable and would significantly improve the overall design if met.

The Town Council is appreciative of the fact that 7-Eleven has agreed that their current designs do not meet mandatory standards in the Development Plan, in particular Standard 1 on page 54 (that 60 % of the façade along Baltimore Avenue be transparent material) and Standard 10 on page 55 (that 40 % of the building face along Sheridan Street be windows). As the LDRC made clear in their review of the proposal, this is an important standard, and in fact it is reflected in one of the “Overall Design Principles” in the Development Plan (at the top of page 27) which states (emphasis added):

*Enhance pedestrian and area safety by encouraging a strong visual connection between the interiors of buildings and the sidewalk, private oversight of public space, and the provision of uniform pedestrian-oriented lighting.*

In review of the updated Statement of Justification and finding (A), the applicant's suggestion that the parcel itself is uniquely small is suspect. They are not proposing to use the parcel to its highest and best use as envisioned by the M-U-TC Development Plan but rather shape an existing building into a suburban, vehicular based design with no connection to the mixed-use goals of the zoning. In looking at other uses in the immediate area this parcel size is of similar size, if not more generous for other existing commercial offerings:

- Auto Parts store at Guilford and US1 : 0.32 Acre,
- Brand new 7-Eleven at same corner main lot 0.402 + secondary 0.199 with TWO BUILDINGS. Fenestration on this corner lot identical to the applicant's property that would meet or exceed M-U-TC requirements. An estimate of the total available area, including the 7-Eleven building and the *entire* parking area minus an unusable "pan handle," is almost exactly the same as the lots for SP-150003.
- 0.848 acre plot on wedge between Cleveland and Baltimore with THREE BUILDINGS AND FOUR BUSINESSES,
- 0.229 acre plot on a right triangle lot on US1 and Cleveland with TWO BUSINESSES including a car rental agency in 2232 GFA
- 0.542 acre plot at Oglethorpe and Baltimore with TWO BUSINESSES: Enterprise Rent-a-Car and Employment agency
- Town Center Market building – M-U-TC adaptive reuse resulting in two businesses (convenience store and beauty salon) : 0.58 Acre

In review of the finding (B), we find the applicant's justification confusing at best, specious at worst. The applicant themselves has triggered many of the design considerations by changing the envelope of the building. The applicant is not using the existing height of the building, but doubling the existing façade. The applicant through their architectural changes has caused most of its own non-conformance. The window issue is not the only design consideration that it has not met. The applicant clearly has changed the US 1 façade with the height changes yet does not feel it necessary to comply with massing and architectural standards mandated by the zoning. We find no compelling justification for their refusal to comply and to state that compliance is in itself "will result in peculiar and unusual practical difficulties or exceptional or undue hardship" due to interior layout changes is highly suspect in the extreme. The applicant has two other walls that lack all windows altogether. If they want to make an interior layout work and still be compliant with the design standards, they could. Realizing that 50% of their existing building lacks windows altogether defines numerous potential interior layouts that would work.

Additionally on the fenestration issues, as pointed out in the bullet above, a smaller 7-Eleven within a mile of the applicant's property was built on a corner property nearly identical in nature to US1/Sheridan and constructed with full windows on walls facing streets. Somehow for that property the owner was able to find layouts that worked, provided for complete fenestration, and did not claim it to be a peculiar or undue hardship. We find claims of architectural and standard compliance to be specious when

there are direct examples of newly constructed properties by the same company that they were able to make work.

### **Community Issues**

*Hours of operation.* Because most of the adjacent properties are residential, it is inappropriate to have a 24-hour business at this location. The hours of operation should be limited to at the very least 6 am to midnight, and better to 7 am to 11 pm. Nearby convenience stores that operate 24 hours per day do not have the same density of residences nearby, and convenience stores that have the same nearby residential density are closed during the night (for example, Town Center Market).

Even the Cafritz/Whole Foods development one block north with close to 40 acres within the M-U-TC zone did not find it appropriate to propose commercial uses to date with 24-7 operations requested. The applicant is taking liberties with specific purpose (5) stating that commercial activity alone operating in a 24/7 basis satisfies this. We contend the first part of the sentence requiring a 'mix of commercial and residential uses' provides the guidance for the interpretation of the purpose; that there are 'eyes on the street' during the evening/night hours when residents are home from work, and from commercial activity when residents are away at work. The applicant is only proposing a vehicular-based commercial offering to satisfy this purpose. We find their commercial business practice to be in direct conflict with the stated purpose of (5).

While sale of alcohol has not been discussed in this application, the Riverdale Park Town Council is strongly opposed to sale of alcohol at this site due to the proposed hours of operation.

*Late-night deliveries/trash collection.* For the same reason as above, deliveries/trash collection (that will disturb adjacent sleeping residents) must be forbidden between 11 pm and 7 am.

*Full-sized semi trucks.* As discussed at the June 10 LDRC meeting, the parking lot is inappropriate for full-sized semi trucks to be used for delivery, and parking a truck on Sheridan Street for delivery would again threaten residential vitality. A mechanism to ensure that only the smaller trucks promised by 7-Eleven are used must be established.

*Mix-Modal Transportation Conflicts.* As proposed, the 7-Eleven is designed to turn as many automobile-based customer trips as possible. Although they have other offerings such as their 'café' style building which promotes pedestrian and bicycle customers as much as automobiles, that offering was not suggested despite numerous LDRC members suggestions. The ingress/egress out of both US1 and Sheridan during commuting hours is untenable due to the lack of a traffic control signal at the property intersection.

*Fenestration.* The applicant attempts to downplay the window issue as minor. We disagree. The Cafritz/Whole Foods development was able to comply with these standards without issue. An almost identical application for a convenience store, Town Center Market (also adaptive re-use), was able to comply without variance. There are

reasons for the windows. They, as the Development Plan state, “improve the safety of pedestrians and parked vehicles through a strong visual connection from inside to outside of the buildings.” At night, during what is supposed to be non-operational periods, the light spilling out from the interior provide additional pedestrian safety elements. Faux windows do not accomplish this, nor does not meeting the standard the applicant imposed on itself. The applicant has decided to change the height of the building thus adding additional square footage. The underlying company has built new stores in the immediate vicinity that would comply with this standard without requiring or requesting for variances.

*Height of the Building.* As proposed, the applicant is not re-using the existing building as they state but doubling the height of the existing building. The interpretation of the zoning’s ‘lesser review’ standard has always been ‘if you change or touch something you trigger the design standard.’ Table 5 on Page 45 clearly indicates the mandatory heights of buildings being a minimum of 2 and maximum of 3. The proposed development takes a shallow roof line and raises it up to a proposed height of 22’8” for no purpose other than to increase massing and visibility at the expense of adherence to design standards.

*Architecture Standards.* Pages 47-48 bring up multiple issues with the applicant’s Special Permit despite changes. It is informative to review the intent of this standard that it should “promote commercial and multi-family residential buildings with designs that are sensitive to nearby single-family detached homes and are an attractive addition to the streetscape.” Standard 1 (and we argue the applicant has triggered this due to the doubling of the vertical height of the existing structure) states that “buildings without a tripartite design may only be permitted outside the historic core if they (a) are architecturally unique and (b) enhance the overall appearance of the town center through conformance to the Riverdale Park M-U-TC development plan’s overall design principles. The building proposed is utilitarian in design and any suggestion of uniqueness is specious and does not enhance the town center nor conform to the design principles. In fact it degrades the high-quality design conformance that is being built out one block north. Standard 2 requires “trademark buildings shall conform in full to the building design standards; departures are not allowed.” We ask this strong standard be applied as it was put in very specifically to address questions and applications such as the reason this Special Permit has occurred. Standard 4 requires buildings greater than 60’ in street frontage that exceed a 1:1 ratio of width to height “shall be articulated so as to read as multiple buildings.” This has not happened with the Special Permit. The architectural details very specifically refrain from doing this and instead do precisely the opposite to create a much larger single building. Additionally, lighting fixtures should be coordinated to be compliant with what Riverdale Park and the Cafritz project are currently installing. New fixtures installed in town are historic in character.

*Parking and Loading.* As proposed the applicant has requested the re-use of two curb cuts with a primary ingress/egress onto Route 1. We find this in direct conflict with the intent of the Parking and Loading Design intent on page 40 that states “to create a pedestrian-friendly environment that supports mix modal transportation while providing adequate parking, use of shared parking lots, and minimal curb cuts onto main streets,

especially US 1. Standard 2 gives additional guidance on this by stating “parking shall be accessed from an alley, side street, or if appropriate, adjacent shared parking.” The applicant clearly wants the main entrance and exit points to be on US 1 creating traffic and pedestrian conflicts unnecessarily. The proposed design is automobile focused not mix modal and certainly does not promote a pedestrian-friendly environment.

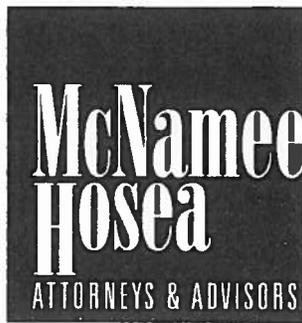
*Landscaping and Pedestrian Amenity Zone.* The applicant in their stamped plans envisions re-milling and re-working much of the existing land and hardscaping. The current plan does not comply with the M-U-TC intent of creating a ‘landscaping/pedestrian amenity strip [that] buffers pedestrians from traffic and extends the green and shaded identity of Riverdale Park’s historic neighborhoods to the town center.’ Despite numerous opportunities to create a sense of place in this development the current parking layout downplays any suggested non-compliant landscape improvements and specifically creates vehicular-pedestrian conflicts; this is in direct conflict with the development’s mix modal message. Given the parcels corner location, the applicant has significant opportunities to create a friendly mix modal transportation environment – the current site plan does exactly the opposite.

ATTEST:

COUNCIL OF THE TOWN OF  
RIVERDALE PARK

  
Sara Imhulse, Town Administrator

  
Alan Thompson, Council Vice Chair



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July 1, 2015

Via Hand Delivery

Taslima Alam  
Zoning Section  
Development Review Division  
M-NCPPC  
County Administration Building  
Upper Marlboro, MD 20772

**Re: 7-Eleven (Riverdale); SP-150003  
Supplemental Justification Statement**

Dear Taslima:

On behalf of the applicant, 7-Eleven, Inc., please accept this letter as a supplemental Justification Statement in support of the above-referenced application. Specifically, and as you know, since the original special permit application was officially accepted on May 18, 2015, the applicant and its consultants have had numerous meetings with the M-NCPPC Staff, Staff from the Town of Riverdale Park, the Riverdale Park M-U-TC Local Development Review Committee ("Riverdale Park LDRC"), and the Mayor and Town Council for the Town of Riverdale Park. In response to these meetings and the requests made therein, the applicant has made a number of significant revisions to the special permit site plan and architectural plan. Accordingly, this letter is intended to supplement, clarify, and/or correct some portions of the original Statement of Justification ("SOJ") dated May 8, 2015. That is, this letter is not intended to necessarily supersede the original Statement of Justification; instead, the two documents should be read together. For clarity, this letter is broken into various subparts that address each of the revisions to the site plan and architectural plan. Where necessary, this letter also provides the justification for departure(s) from the strict application of any development standard or guideline approved in the *Town of Riverdale Park MUTC Development Plan* ("Development Plan").

GROSS FLOOR AREA ("GFA")

As described in great detail in the original SOJ, the applicant is proposing to use the existing building, which was built circa 1966 and used as a gas station until sometime in 1983. Based on information and belief, sometime after 1983, the use of the building changed from a gas station to a medical office (dentist). The building is currently used as a dental office. No improvements have been made to the building since 1966, and with the exception of the removal of gas pumps and the underground storage tanks, the property has remained relatively unchanged for almost 50 years. Consequently, the appearance of the building and the property as a whole is

unattractive, and currently does not contribute, in any way, to the vision or goals of the Town Center. However, to make the building and property more attractive, the applicant is making a significant number of improvements that will greatly enhance the aesthetics of the building façade as well as the property as a whole. These improvements also include significantly reducing the amount of existing impervious area.

One of the critical threshold issues in this case was whether the applicant's improvements were increasing the gross floor area of the building by more than 15%. (See original SOJ for a complete analysis on this issue). Since the application was accepted on May 18, 2015, and in order to ensure that the 15% increase in GFA was not exceeded, the applicant has again revised its site plan. As originally submitted to the Development Review Division of the M-NCPPC, the applicant, among other things, sought to enclose an existing open alcove at the northwest corner of the building; add a 5' x 6' (or 30 square feet) building addition;<sup>1</sup> close one curb cut along Baltimore Avenue; repair and restripe the parking lot; improve the exterior elevations; add landscaping; and significantly decrease the impervious area on the property. With one exception, as explained below, all of these improvements are still proposed.

At the June 10, 2015 Riverdale Park LDRC meeting, additional questions were raised regarding the actual size of the open alcove and whether its enclosure exceeded the 15% threshold. Since that time, the applicant and its consultants re-reviewed the ALTA Survey and field measurements to ensure that the exact size of the alcove and building were one hundred percent correct. As a result, the applicant, and to remove any further doubt as to whether the 15% threshold review limitation has been met, has agreed to remove the proposed 30 square foot addition on the back of the building. Thus, the mathematical breakdown regarding the building GFA and the applicability of the Development Plan is as follows:

Building Area Calculation

Total Existing Building Footprint	1,952 SF
Building Area Excluding Open Area To Be Enclosed	1,716 SF
Open Area Under Roof To Be Enclosed	236 SF
Total Area Of New GFA	236 SF
Percentage Of Area Increase	$236 \text{ SF} / 1,716 \text{ SF} = 13.75\%$

The reason why this determination is critical to the analysis is because the *Applicability* Section of the Development Plan provides, in pertinent part:

<sup>1</sup> In response to issues raised by the Riverdale Park LDRC, the proposed building renovations have recently been revised from what was originally submitted to and reviewed by the Riverdale Park LDRC. Originally, the applicant proposed a 275 square foot addition on the back of the building.

Development that increases existing gross floor area (GFA) by 15 percent or 7,500 square feet, whichever is smaller, shall subject the site to full review for compliance with the design standards. *Lesser changes to the site . . . shall not subject the entire site to review for compliance, only the portion impacted by the improvement.*

...

Additions of less than 250 square feet GFA . . . shall be exempt from the requirements of the Building Placement and Streetscape Section.

(Development Plan at pp. 28 – 29) (emphasis added). The logical and adopted interpretation of this language is that any development that increases the existing gross floor area of a building by less than 15% or less than 7,500 square feet, whichever is smaller, is deemed “lesser changes,” and “lesser changes” only subject the site to a *partial review* for compliance. (Emphasis added). Moreover, because the increase to the existing gross floor area is less than 250 square feet, it is clear that the requirements for the Building Placement and Streetscape Sections are not applicable. As previously explained in detail in the original SOJ, this application is only subject to a partial review for compliance with the design standards of the Development Plan, and the Riverdale Park LDRC erred when it reviewed this application for full compliance of the development standards, and also erred when it recommended denial based on the fact that the applicant’s plan failed to meet all of the development standards of the Development Plan.

Regardless, the applicant has remained committed to working with the Riverdale Park LDRC and the Mayor and Town Council for Riverdale Park by agreeing to continue to revise its plans to address comments and concerns recently provided, which are explained in detail below. As it relates to the threshold applicability issue, the applicant contends that there can no longer be any debate as to whether the proposed increase to the GFA is less than 15% and less than 250 square feet. Consequently, the improvements under this application are “lesser changes” and the standard of review for this application requires a *partial review* by the Planning Board. (Development Plan at pp. 28 – 29) (emphasis added).

#### ARCHITECTURAL REVISIONS

On June 10, 2015 and on June 22, 2015, both the Riverdale Park LDRC and the Mayor and Town Council for Riverdale Park, respectively, provided comments regarding the proposed elevations. Specifically, the Riverdale Park LDRC requested that the architectural plans be

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revised to comply with the window requirements of Standard 1 on page 54 and Standard 10 on page 55 of the Development Plan, and the Mayor and Town Council generally commented that the overall building design should be enhanced. In response, the applicant has submitted a completely revised architectural plan that it believes addresses the intent and purpose of the comments received.

The revised architectural plans include the following changes:

- Color palate flipped to provide the shale brown brick color at the top and the darker Alexandria Red Buff color on the bottom;
- Extended the parapet along the front façade over the main entrance an additional four (4) feet; thereby extending the total height of the building, which now ranges from 18'8" to 22'6";
- Added a faux window to the left of the main entrance of the building's front façade facing Baltimore Avenue;
- Added a faux window to the north side of the building façade facing Sheridan Street;
- Improved the signage by revising the signage plan to include channel letters;
- Relocated all meters and electrical equipment to the rear of the building; and
- Removed the proposed 30 square foot addition on the back of the building.

These changes are not only significant, but are also responsive to the comments and requests that were made to ensure that the building elevations are superior in design and quality. Unfortunately, despite these significant changes, the applicant is unable comply with the strict application of Standards 1 and 10 on pages 54 and 55, respectively. As explained in detail below, given that the applicant is reusing the existing building and is not proposing to raze and rebuild the structure, the strict application of these two standards would actually result in a building that is architecturally unappealing and atheistically unpleasing. For example, due to the size of the store, it is impossible for the applicant to provide windows along 60% of the Baltimore Avenue façade and 40% of the Sheridan Street façade, as the interior layout would result in these windows looking into the back of house storage areas and mechanical areas or would require the vast majority of these windows to be "blacked out," which would not be pleasing or attractive. As a compromise, and to meet the spirit and intent of these design standards, the applicant is proposing a total of two (2) faux windows (one along the Baltimore Avenue façade and one along the Sheridan Street façade) that will match the actual windows proposed on the building. The applicant contends that this solution solves many problems while addressing the development standard, which should be applied with an eye towards flexibility. Again, despite the addition of two faux windows, the applicant does not strictly meet the standards, and therefore, is requesting a departure pursuant to Section 27-548.00.01(a)(2).

DEPARTURE FROM THE DESIGN STANDARDS (SECTION 27-548.00.01(A)(2))

First and foremost, it should be noted that because the Riverdale Park LDRC denied the original development plan filed by the applicant, which led to the filing of a special permit to appeal said denial, the pending application has been filed using special permit procedures and not special permit findings. This distinction and clarification was made in the Wachovia Bank case (SP-06003). Moreover, it bears repeating that the “M-U-TC Zone is *intended to be flexible and allow the applicant alternatives to strict application of all of the design standards* when developing in accordance with the goal, design principles, and intent statements of the development plan.” (Development Plan at p. 29) (emphasis added). The same is true regarding the Development Plan itself, as it is intended to “create a *flexible framework for reviewing and approving future development in the M-U-TC Zone,*” and its purpose is to “establish a *flexible regulatory framework . . . to encourage . . . redevelopment . . .*” Sections 27-546.13(a)(1) and 27-546.09(a)(6) of the Zoning Ordinance (emphasis added). With these purposes and general guidelines in mind, the applicant contends that its proposed development plan and the requested departure(s) does not substantially impair the goals of the Development Plan, and instead, significantly improve an otherwise old and outdated commercial property that was originally constructed in the mid 1960’s as a gas station with a significant amount of impervious area.

The two standards that the applicant, despite its revisions to the architectural plans, is unable to meet are Standards 1 and 10 on pages 54 and 55, respectively, of the Development Plan. These standards state:

*Standard 1 on Page 54*

Commercial facades at ground level facing a street shall be visually permeable . . . that is to be achieved through a minimum of 60 percent of the ground floor façade being constructed of transparent material.

*Standard 10 on Page 55*

Walls facing public street or to the rear shall have windows that occupy at least 40 percent of the wall area.

Admittedly, it is unclear whether Standard 1 on page 54 is actually applicable to the proposed development, as the language in Standard 1 can be read in a manner that makes it applicable to buildings that have more than one story and include a mix of uses. Interpreting the language of Standard 1 on page 54 based on a reasonable and logical interpretation leads a reasonable person to conclude that this standard is not and should not be applied to a one story commercial building that is being renovated or improved to enhance its appearance and façade. The basis and logic for this interpretation stems from the fact that the standard uses the term

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“commercial facades at ground level” when describing facades facing a street. Compare that language with the language in Standard 10 on page 55, which is different despite the fact that the two standards seem to drive at the same purpose or intent (i.e., to provide windows on building walls facing a public street). The only logical explanation for two separate standards that seek to accomplish the same goal, yet have two different descriptions (i.e., “commercial facades at ground level facing a street” and “walls facing public streets”), is that one applies generally to all walls facing a street (i.e., Standard 10 on page 55) and the other only applies to buildings that have commercial facades at ground level (i.e., Standard 1 at page 54).

Again, the latter standard implies that the building must include more than just one story to apply, as the “commercial façade at ground level” is what triggers the standard. Any other interpretation of this standard makes no logical or reasonable sense, as it would otherwise conflict with the 40 percent requirement in Standard 10 on page 55. This, at the very least, should be a consideration when reviewing the applicant’s departure request, which is still being requested despite the apparent conflict in the two standards so as to ensure that there are no issues at the time of permitting should the Planning Board approve SP-150003. One other final thought with regard to the conflicting nature of these two particular standards is that Architecture Standard 5 on page 48 requires that “materials on facades facing a street should be composed *primarily* of brick, stone and articulated stucco with concrete, metal and wood details.” Therefore, at a minimum, if Standard 1 on page 54 applies to the proposed development, it absolutely conflicts with Standard 5 on page 48, which requires the façade facing the street to be composed *primarily* of brick, stone or stucco. “Primarily” is defined as “essentially; mostly; chiefly; principally.” Therefore, it seems impossible to read Standard 5 on page 48 and Standard 1 on page 54 together, as they conflict. Simply put, it is impossible to have a wall facing a street be “primarily” brick and also be 60% windows.

Despite these conflicts, the applicant has made significant revisions to the architectural plans to not only respond to the comments received, but to also promote the renovation of an old, unattractive, and outdated commercial building that – once improved – will add to the Town Center. In as much as they apply, the applicant is requesting that the Planning Board grant a departure to Standard 1 on page 54 and Standard 10 on page 55, as the applicant is unable to strictly adhere to these two standards.

In order for the Planning Board to grant a departure from the strict application of any standard or guideline approved in the M-U-TC Development Plan, it shall make the following findings:

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**(A) A specific parcel of land has exceptional narrowness, shallowness, or shape; exceptional topographic conditions; or other extraordinary situation or conditions;**

COMMENT: The subject property is generally narrow and is surrounded on all four sides by either right-of-way or existing development, which makes acquiring more land impossible. Specifically, the subject property is made up of a compellation of substandard lots that were created by record plat recorded in 1904, which pre-dates any zoning regulations in the County. Collectively, these lots only equal 0.473 acres (or 20,605 square feet). Thus, the property is uniquely small for a property that has been used commercially for almost 50 years. By way of example, the adjacent office building development to the south (6309 Baltimore Avenue), which was constructed circa 1984, is on a collection of lots that are nearly double the size of the subject property. Other extraordinary conditions exist on the property that includes unusual topography. Specifically, according to PGAtlas, three sides of the property (east, north and northeast, south and southeast) have steep slopes that range from 15% to 24%. This area is undeveloped and is intended to remain undeveloped due to topographical conditions. Consequently, and given the scope of the this application – including the “lesser changes” and partial review – the topography results in a further narrowing of the property, which creates extraordinary conditions.

**(B) The strict application of the Development Plan will result in peculiar and unusual difficulties to, or exceptional or undue hardship upon, the owner of the property; and**

COMMENT: As it relates to the two standards that the applicant cannot meet (to wit: Standard 1 on page 54 and Standard 10 on page 55) strict application will result in peculiar and unusual practical difficulties or exceptional or undue hardship, because it will require the applicant to add windows to the facades of the building that will detrimentally impact the interior layout of the store and/or potentially negatively impact the residential units that face Sheridan Street. The applicant has designed and redesigned the interior floorplan no less than 11 times to try and comply with the exterior requirements/standards of the Development Plan; however, regardless of the layout, it is impossible for the applicant provide actual windows along the side wall facing Sheridan Street and it is possible for the applicant to provide 60% transparent glass along the front wall facing Baltimore Avenue. Moreover, the applicant contends that requiring such a standard will actually result in a less aesthetically pleasing building design and will create more of an impact to the nearby residential development on the north side of Sheridan Street.

Nevertheless, and remembering that the purpose and intent of the M-U-TC Development Plan is *to be flexible and allow the applicant alternatives to strict application of all of the design standards*, the applicant is proposing a workable solution to the very practical problem regarding the window standards and the inherent conflict with the interior layout. As reflected on the

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revised elevations, the applicant is proposing two (2) additional faux windows – one on the west façade (Baltimore Avenue) and one on the north façade (Sheridan Street) – that will be identical to the actual windows next the main entrance to the store. These faux windows serve two functions, first, to the fullest extent practical, they seek to respond to the standard by addressing the spirit of the standard, and second, they ensure that peculiar and unusual difficulties are not created regarding the interior layout of the applicant’s store. When flexibly applying the design standards, the Planning Board should guard against negatively and irreparably damaging commercial businesses by dictating internal floor design through exterior development standards. This is true especially given the intent of the Development Plan which articulates and requires flexibility when applying the standards, which, in this case, will result in a design that responds to the spirit and purpose of the standard while ensuring the commercial business can operate in a manner that will ensure its viability.

The applicant’s design – including the faux windows – provides for the following percentages for windows on the two facades in question:

- Baltimore Avenue façade:  $355.5 \text{ SF (combined glazing SF)} / 1,385 \text{ SF (Total façade)} = 26\%$
- Sheridan Street façade:  $52.5 \text{ SF} / 539 \text{ SF (Total façade)} = 10\%$

Finally, if these two standards are strictly followed, the applicant may not be able to improve the property and operate the intended business, and therefore, may be forced to terminate its contract with the property owner, which would create undue hardship to the owner.

**(C) The departure will not substantially impair the intent, purpose, or integrity of the General Plan, Master Plan, or the Town Center Development Plan.**

COMMENT: As expressed above, a departure from Standards 1 on page 54 and 10 on page 55 will not impair the intent of the Development Plan or the General Plan. The faux windows, in conjunction with the actual windows, do not completely diminish the sites ability to be developed and designed in conformance with the Development Plan. This is evidenced by the fact that the development otherwise complies with the other applicable design standards. Furthermore, the applicant, in response to comments and requests made by the Mayor and Town Council during its work session on June 22, 2015, has agreed to add a seating area on the north side of the building, a bike rack, and additional landscaping in the front and behind the building – none of which is required by the Development Plan. These additional improvements, which go above and beyond what is otherwise required, works to further ensure that the proposed development does not impair the intent of the Development Plan or General Plan. As provided

above and as discussed in detail in the applicant's original SOJ, this development, which is deemed a lesser change that is subject to a partial review, meets the applicable development standards and ensures that the departure does not impair any Plan.

#### SITE PLAN REVISIONS

As mentioned above, in response to various comments received by the Riverdale Park LDRC and the Mayor and Town Council for Riverdale Park, the applicant has also revised its site plan. The following is a list of changes to the site plan:

- Ultimate right-of-way for Baltimore Avenue (US 1) was added and dimensioned to the centerline;
- The building footprint was adjusted to remove the 30 square foot addition on the back of the building;
- All building area calculations and dimensions have been revised to match the ALTA Survey and field measurements. The site plan mirrors the building calculations provided herein and depicted on the Architectural Plans also filed in conjunction with this supplemental justification statement;
- The site layout was adjusted as follows:
  - Removed one parking space since the total size of the building was reduced. Pursuant to the Development Plan, the maximum number of parking spaces now required is 10 spaces, which are provided on the revised site plan;
  - The Co2 tank was relocated to the back of the building;
  - The dumpster location was shifted to the north to accommodate a seating and landscape area at the northwest corner of the building. Benches and a trash can were added to this area for pedestrian place making and connectivity with the nearby residential neighborhood;
  - A bike rack was added to the southwest corner of the building;
  - Adjusted the ADA parking space size to conform to applicable standards; and
  - Added a pedestrian walkway to connect the sidewalk along Baltimore Avenue (US 1) to encourage pedestrian activity and connectivity.
- Landscape plan was revised as follows:
  - Additional shrubs were added at the southeast corner of the intersection of Baltimore Avenue (US 1) and Sheridan Street to further prevent foot traffic through this green/landscape area;
  - Additional trees were added to the rear of the property to provide additional screening;

- A tree was added along Sheridan Street to provide additional screening; and
- Additional shrubs were added around the new pedestrian patio area along the north side of the building.
- Detail Sheet 4 added to show:
  - The Tree Canopy Coverage Chart;
  - Details of the newly proposed bench, trash can, and bike rack; and
  - Details with dimensions of the new channel letter building signage.

The applicant contends that these revisions address the comments received – including certain referral comments – and results in a project that is in keeping with the goals, policies, and intent of the Development Plan. Specifically, with the revisions to the site plan, it is clear that the applicant, although not required by the Development Plan, is creating a comfortable pedestrian environment and attractive streetscape that currently does not exist on the subject property. Indeed, the property is currently devoid of any attributes that contribute to the Town Center. The totality of the all of the revisions to the site plan and the architectural plan, some of which are not otherwise required, results in a development plan that will enhance the Town Center by providing pedestrian connections and seating; adding landscaping that softens the streetscape; significantly reducing impervious areas; and creating a sense of place on a property that currently is cold, outdated, and unattractive.

#### PURPOSES

The purposes of the M-U-T-C Zone are provided for in Section 27-546.09, as follows:

- (a) The specific purposes of the M-U-TC Zone are:
- (1) To create with the community a development framework that can capitalize on the existing fabric of the County's older commercial/mixed-use centers and corridors.
  - (2) To promote reinvestment in, and the appropriate redevelopment of, older commercial areas, to create attractive and distinctive community centers for shopping, socializing, entertaining, living, and to promote economic vitality.
  - (3) To promote the preservation and adaptive reuse of selected buildings in older commercial areas.
  - (4) To ensure a mix of compatible uses which compliments concentrations of retail and service uses, including institutional uses, encourages pedestrian activity, and promotes shared parking.
  - (5) To provide a mix of commercial and residential uses which establish a safe and vibrant twenty-four hour environment.

(6) To establish a flexible regulatory framework, based upon community input, to encourage compatible development and redevelopment, including shared parking facilities, that will enhance the Town Center.

(7) To preserve and promote those distinctive physical characteristics that are identified by the community as essential to the community's identity, including building character, special landmarks, small parks and other gathering places, and wide sidewalks

COMMENT: This application meets these purposes, as it implements the purpose to promote reinvestment in older commercial areas and it proposes the reuse of an older building that takes advantage of a flexible regulatory framework to enhance the town center. With one minor exception (i.e., the window percentages on walls facing public streets) the applicant is meeting all of applicable standards and has proffered to meet a number of the other design standards that are otherwise not applicable given the partial review for compliance with the Development Plan. By approving this application, the Planning Board will be ensuring that revitalization of an old and outdated property is realized, and that the purpose of creating a zone that allows for commercial development that creates a safe, vibrant, 24-hour environment is met. Applying the Development Plan, which again (pursuant to Section 27-546.13) is intended to be flexible for reviewing and approving future development in the M-U-TC Zone, in the manner originally applied by the Riverdale Park LDRC will actually work to frustrate the purposes of the zone. Recently, the Riverdale Park LDRC has opined that this application does meet the requirements of a lesser change and is only subject to a partial review. Consequently, and with the additional changes to the plans, as outlined in this supplemental justification statement, the applicant believes that it has satisfied and addressed all of the comments received to date, and is hopeful to receive the Riverdale Park LDRC's and the Town of Riverdale Park's ultimate support for this application.

#### CONCLUSION

Based on the partial review for compliance and the exemptions of the Development Plan, only that portion impacted by the improvement on the property triggering review is legally reviewable in relation to the design standards contained in the Development Plan. Extending the review beyond that which is applicable is an erroneous conclusion of law and renders any decision based therefrom arbitrary and capricious. As evidenced by the significant number of revisions from what was originally proposed in October, 2014, to what was submitted for review in SP-150003 in May, 2015, to what is now being proposed, the applicant contends that it has not only responded to the concerns raised by the Riverdale Park LDRC, but is also proposing a development plan that adheres, as much as possible, to the Development Plan, which meets many of the other design standards not otherwise applicable. The subject property is not located in the historic core nor is it a transitional property.

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Based on the foregoing, as well as all of the revised development plans filed in conjunction with this application, the applicant contends that its site plans are either in conformance with the applicable design standards of the Development Plan or meet the requirements for a departure for those that are not, and therefore, requests that SP-150003 be approved. For the reasons provided herein, as supported by the evidence presented (or to be presented), the applicant hereby respectfully requests that SP-150003 be approved as proposed.

Respectfully submitted,

**MCNAMEE HOSEA**

By  \_\_\_\_\_  
Matthew C. Tedesco, Esq.