

- B. The proposed expansion of the “food and beverage” store, or “convenience store,” as it was called by DPS is **denied**.
- C. The proposed expansion of operating hours for pumping gas from 5:00 a.m. to 12:00 midnight, 7 days a week is **denied**, and the permitted hours are set forth in the conditions below.
- D. The request to permit an existing power car vacuum is **denied**; the existing kerosene pump must be re-located so that it complies with all applicable setbacks.
- E. The other proposed modifications to the site plan and to certain operating conditions are **granted**, subject to the conditions set forth below:
1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner’s Report and Recommendation and in this opinion.
 2. All terms and conditions of the approved special exception (S-1471) shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition.
 3. The hours of operation shall be as originally approved for the special exception, as follows: The gas pumps may be operated from 6:00 a.m. to 11:00 p.m., Monday through Friday and 8:00 a.m. to 11:00 p.m. on Sunday. They must be closed on Saturday. The light automobile repair shop may operate from 6:00 a.m. to 7:00 p.m., Monday through Thursday; 6:00 a.m. to 5:00 p.m. on Friday; and 8:00 a.m. to 1:00 p.m. on Sunday. It must be closed on Saturday.
 4. Only light automobile repair work may be done at the subject site. Major auto repairs, spray paint operations, auto-body repairs and fender repairs are not permitted.
 5. The special exception is limited to the existing five fuel pumps or five replacement pumps. Fuel storage tanks and fuel pumps must comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE), and must comply with all County, State and federal technical standards and permitting requirements. Petitioner shall ensure that all chemicals stored on site are stored in accordance with applicable Codes.
 6. The current single canopy arrangement for the automobile fuel pumps is permitted, and the canopy area is limited to its current dimensions. In order to speed up operations and avoid queuing onto the public streets,

Petitioner must either accept credit cards at the pumps or have an attendant stationed at the pumps to accept cash and make change. If the Petitioner does not accept credit cards, on any day that an attendant is not available, the station must close. Petitioner must implement these payment measures within 30 days of the effective date of this Resolution.

7. Only two-thirds of the canopy lights may be on at any time during operating hours. After operating hours, only one row of canopy lights, the middle row, may be left on for security. Lights in the back of the building must be turned off when the station is closed. Within 30 days after the Board's resolution becomes effective, Petitioner must submit a follow-up photometric study demonstrating that its lights do not impermissibly "reflect or cause glare" into any residential zone, as required by Zoning Ordinance §59-G-2.06(b)(3). If the photometric study indicates excessive light spillage (*i.e.*, more than 0.1 foot-candles at the residential property owner's property line, after subtracting out light spillage from sources other than Petitioner's filling station¹), then Petitioner must take appropriate steps to shield the lights or reduce their intensity so that such excessive light spillage does not occur.
8. The minor changes which have been made to the windows, the façade and the outside of the building, as shown on the revised Site Plan (Exhibit 36(c)) and the revised elevations (Exhibit 36(d)), are permitted; however, Petitioner must obtain permits from DPS for any signs that are posted on the site, and the signs may be displayed only in locations shown on the revised site plan (Exhibit 36(c)), or its approved successor. Copies of the sign permits must be filed with the Board of Appeals. Petitioner must remove the advertising posters along the building façade.
9. The minor changes to the floor space inside the building, as shown on the revised floor plans (Exhibit 36(d)) are permitted, except for the expanded food mart area, which constitutes an impermissible expansion of the use. The 225 square feet of expanded food mart ("sales") area, as shown on the first floor of the revised floor plans (Exhibit 36(d)) must not be used for sales of food or anything else in connection with the automobile filling station use, and must be returned to its use prior to the expansion of the food mart sales area. The original 171 square feet of "sales" area next to the cashier on the first floor of the building may be retained. A newly revised floor plan should be filed within 30 days showing the correct size of the cashier and food mart sales area.

¹ The Hearing Examiner suggests "subtracting out light spillage from sources other than Petitioner's filling station" because the residential zones across Maryland Rout 108 from the subject site are located on a busy road with other light sources. ~~However, the Board finds it would be unfair to make Petitioner, which has no control over those other light sources, reduce the total light spillage onto the residential zones from all sources. Accordingly, Petitioner's photometric study must address the lighting on the subject site only.~~

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10. The Planet Aid clothes collection box, the telephones, the soda machine, and one of the power vacuums, which have been removed from the site, must not be replaced; nor may any other new appliances, equipment or accoutrements be added to the site without express permission of the Board. The remaining power vacuum must be removed from the site, and the kerosene pump must be re-located to comply with all required setbacks. A newly revised site plan must be submitted within 30 days after the effective date of the Board's resolution showing these changes. The air-pump, air-conditioning unit and handicapped parking space are all appropriate additions to the auto filling station, and Petitioner may keep them as located on the revised site plan (Exhibit 36(c)).
11. All cars connected to the special exception use must be contained on the special exception site, with no cars parked off site or overhanging any public right-of-way. Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited.
12. All plantings must be installed as shown on the original plans for the special exception.
13. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
14. Petitioner shall submit a revised site plan showing the new location for the kerosene pump, and removal of the power vacuum; revised floor plans showing return of the food mart area to the 171 square feet originally approved; and a photometric study showing compliance with Condition No. 7 above.
15. By copy of this Opinion, the Board requests that the Department of Permitting Services conduct an inspection of the special exception within 45 days of the effective date of the Board's resolution, to determine compliance with the terms and conditions herein, and provide the Board with a written report of its findings.

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On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement the Board denied the request for Oral Argument, and adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this May 3, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.