

**PLANNING AND ZONING COMMISSION  
MINUTES  
March 20, 2012**

**ATTENDEES:**

Members  
Pam Buckley  
John Staley  
Peck Miller  
Lauren Taylor  
Chris Shanahan  
Joel Brous

Staff  
Blaine Smith  
Kay Stroud  
Jesse Houston  
Robert Nelson  
Kevin Gregory

**CALL TO ORDER – 6:47 PM**

**I. APPROVAL OF MINUTES:**

Minutes of March 6, 2012 – Peck Miller made the motion, Lauren Taylor seconded. Unanimous approval (6-0). Tom Singman was absent.

**II. CONDITIONAL USE PERMIT & SITE PLAN:** Heard concurrently at 7 PM.

Pursuant to the provisions of Article II, Division 5, Section 110-121, et. seq., Conditional Uses, a request has been filed under the provisions of Section 110-514(20), Uses permitted by Conditional Use in the LC-1, Local Commercial, District, to permit expansion of existing fuel service facilities; and a concurrent site plan review for a proposed new convenience store. The site of the request is described as located on Parcels 6812 & 6813, Sinepuxent Plat, 1891 (Bayside); further described as located on the northwest corner of 52<sup>nd</sup> Street and Coastal Highway, and locally known as 5201 Coastal Highway, in the Town of Ocean City, Maryland.

**APPLICANT: CATO, INC. (FILE #12-12100003 & FILE #12-18100002)**

Blaine Smith was sworn and presented application. Site plan was reviewed by the Technical Review Committee (TRC) on March 19, 2012. To illustrate existing neighborhood, Mr. Smith introduced a zoning map with color highlighted LC-1 district and further described the neighborhood for compatibility. As a Conditional Use permit, the applicant proposes to add two (2) more pump filling stations to the currently existing four (4) pumps. Current operation is an existing maintenance and service station. After the existing is demolished, the proposed new building will be convenience store. No nonconformity or credits for parking – convenience store has excess parking. Critical Area buffer to be honored.

Joseph E. Moore, Jr. represented the applicant. His first witness was Keith Iott, 310 Hammond Street, Salisbury MD. Mr. Iott, an architect/engineer, has qualified as expert previously with this Commission and other bodies. He testified that the service station predates zoning code. The proposed expansion of pumps will cause the new structure to be placed further west, opening site. The proposed new configuration would alleviate traffic congestion, currently a problem on the site and at the traffic light at 52<sup>nd</sup> Street and Coastal Highway. He further testified to the lighting design, under the canopy to be recessed, and also on the western side of the project.

The new lighting ordinance requires shielding of bare bulbs, necessitating a change of lighting fixture on the west side of the structure.

Mr. Iott affirmed that the first site plan submitted had shown the southerly curb cut onto Coastal Highway as removed. Rochelle Outten had approved the earlier design, but was not yet aware of the revision dated March 19, 2012. Subsequent to TRC, the applicant requested to put it back in the plan as an exit-only. The exit could be closed off, but the applicant, Mr. Abercrombie, studied the adjoining property to the north and found an existing sign projecting a couple feet from property line which could make line of site difficult to use north ingress/egress. The northerly ingress/egress will still function if southerly egress must be removed. Mr. Iott acknowledged that the decision would ultimately come from the State Highway Administration after Ms. Outten receives the new revision. He testified that he does believe the conditional use requested would be compatible with the surrounding area.

Mr. Moore submitted 25 pages of the Comprehensive Plan, reading portions of the Economic Development Plan. He stated that the trend to enhance retail and increase need for year-round residents is a goal of the Plan.

Planning Commission commented it does not like any parking spaces backing out on 52<sup>nd</sup> Street. Member Peck Miller commented to concentrate on sidewalks to safely move the 25/26 residents from west to east up to convenience store, light. Because 52<sup>nd</sup> Street is only 30' wide, design should sacrifice proposed landscaping for sidewalk. Peck commented that he likes egress onto Coastal at southerly curb cut instead of all traffic emptying into 52<sup>nd</sup> Street. He is familiar with the 85<sup>th</sup> Street Exxon which operates in a similar manner. Mr. Iott encouraged the Commission, if in agreement, to make written recommendation to present to Terry McGean, City Engineer and SHA's Rochelle Outten.

Pete Cosby, representing Warren's Park, questioned Mr. Iott as opposition. Mr. Cosby asked for clarification between a fueling station and a service station. Mr. Moore objected since this proposed convenience store is a principle permitted use with existing pumps. Only the newly proposed pumps cause a Conditional Use application to be made.

Blaine Smith read the definitions from the Town's zoning code and explained that in his opinion, Code Section 110-514(20) makes this a filling station. He also confirmed the parking tabulations per Code Section 110-932 as a mixed-use project.

Peck Miller, listening to Mr. Cosby's statements concerning placement of the dumpsters and the noise that could be involved towards the west end of the project made recommendation to place dumpsters up next to building south as opposed to middle of parking lot.

Chairperson Pam Buckley commented that it would be good to include a bike rack in the site plan.

Citizens offering positive/neutral comments:

- Art D'Agostino, 104-52<sup>nd</sup> Street. Questioned lighting plan to the western side of site. Agreed with Commissioner Miller that the key must be shielded lights. His family has owned their property since 1962 and knows that the subject property used to be an oil-transfer location. Ten (10) years ago an environmental issue needed to be addressed with spillage and was soaked up. Ground is disturbed there already, has observed an oil sheen dumping into lagoon there occasion. Mr. Lott testified that no wet pond would be included in the design and that a fence would be installed per his recommendation. Also questioned traffic issues and commented he didn't desire any deleterious affect on his property.

- Jerry Dean, 222-52<sup>nd</sup> Street. Asked if new tanks would be required. Answered by applicant, Michael Abercrombie Jr. 138 Old Landing Road that tanks will remain the same.

- Mel Frankenburger, 208 W. 52<sup>nd</sup> Street in support of new convenience store, but concerned about traffic increasing. Asked that applicant make sure site would be developed with taxpayers in mind.

Opposition comments:

Pete Cosby questioned Mr. Abercrombie:

- 1) Times for operation – closing at 2 AM, but would like to stay open 24 hours.
- 2) Music at pumps – willing to commit to none.
- 3) Food outside after 2 AM

He called as the following witnesses and also submitted excerpts of the Comprehensive Plan as evidence:

- Gary Shockley, 17 Launch Drive, Warren's Park, on Board of Directors. Has lived there 40 years. Authorized to obtain counsel for representation. Testified that traffic very busy on 52<sup>nd</sup> Street with wave-runners and scooter businesses nearby. Scooters now use 52<sup>nd</sup> Street for training area. Warren's Park is situated between Seacrets & Macky's, believes new arrangement will be detrimental. Historically the Park has done well with Mr. Anderson, who closed at 2 AM. If the new convenience store offers food service 24 hours a day, he is concerned people will walk through Park. Mr. Shockley does not like to see delivery trucks park out front in bus lane, really consider street width and late night operation. He would like to see dumpster moved off corner and concealed. Commotion and traffic biggest concerns.

- Walter Andrews, 16 Launch Drive, treasurer of Warren's Park Board of Directors, has new home, exits out on 52<sup>nd</sup> Street.

- Charlotte Litsinger, 40 Bay Overlook Drive, asked would town put up signs because 52<sup>nd</sup> Street not a thru street. Would like people to use traffic light.

- Aaron Webb, 214-52<sup>nd</sup> Street, lived there since '63. Traffic main concern, 52<sup>nd</sup> Street becomes a choked street, would like to see a sidewalk installed.

Mr. Moore entered into the record a site assessment letter from the Dept. of Environment, showing no action taken in light of Mr. D'Agostino's comments.

Closing statements from Pete Cosby – clients want to be reasonable. His opinion it would be fair balance, right thing to do to keep existing pumps, add the new convenience store, push building to east loosen site up. Move dumpster around, reconfigure.

Closing statements from Joe Moore – providing 4 additional spaces to fill cars with gas. Anomaly – what is there is a service station and what they are going to put is a filling station. If those two additional pumps were not to be placed there, would only be administrative site plan approval.

John Staley and Lauren Taylor moved and seconded to close hearing (6-0). Commission will hold off deliberations until SHA sends back comments and they can each visit the site. Lauren cautioned that the site is already a burdened site, that the additional pump expansion and new convenience store could be an overuse of the site. Pam opined that the newly opened front of the site shouldn't cause queue problems. Peck – likes design, wants to see sidewalk, 2<sup>nd</sup> exit on Coastal Highway.

Mr. Iott asked the Commission for written recommendation stating operation would be very similar to the 85<sup>th</sup> Street situation.

Other discussion revealed Commission in favor of taking input from neighbors and tweaking it a bit to make a better design for everyone.

Chairperson Buckley stated consensus to:

- Send Mr. Iott with letter to strongly consider exit-only at south curb cut.

And to make these changes to the site plan:

- Move dumpster area to south side of building with proper concealment.
- Show sidewalk on 52<sup>nd</sup> Street.
- Showing a compliant loading zone in the rear of the store.
- Show some signage on 52<sup>nd</sup> Street so patrons would realize it's not a thru street.

Hearing is closed, continuation of deliberation after changes made and comments received. Staff asked to re-mail adjacent property owners when it comes back on agenda.

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**III. ADJOURNMENT - 9:10 PM**

John Staley, Secretary                      4/17/2012  
**John Staley, Commission Secretary / Date**