

IN THE MATTER OF	:	BEFORE THE
<b>PINE ORCHARD SUNOCO</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 15-002N

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**DECISION AND ORDER**

On June 22, 2015, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Pine Orchard Sunoco for confirmation and extension of a nonconforming use for U-Haul trailer rentals in a B-1 (Business: Local) Zoning District, filed pursuant to Sections 129.0.D and 129.0.E.1 of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice, posting and advertising requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Pine Orchard Sunoco (Petitioner) was not represented by counsel. Mohammad Saifudden, David Abbott and Mahood Arshad testified in support of the petition. Karen Furbe testified in opposition to the petition.

**Preliminary Matters – Petitions and Plans**

1. The Original Petition and Plan. On January 14, 2015, Petitioner submitted a nonconforming use petition and Plan to the Department of Planning and Zoning (DPZ). The petition contained only pages 1, 2, 3, 6 and 7 of the petition form. The Plan submitted was reduced in size to fit on 8"x11" paper. This plan depicted the location of the proposed U-Haul vehicle rental use in the northeast

(rear) corner of the Property, along the common lot line with the northern parcel and along the Pine Orchard Lane lot line.

2. The Revised Petition and Plan. On April 7, 2015, Petitioner submitted a revised petition and plan to DPZ. The petition again contained only pages 1, 2, 3, 6 and 7 of the petition form. An April 7, 2015 letter from Mohammad Saifudden to DPZ reviewer Zan Koldewey, describes the revisions. On page 2, Petitioner includes this note: "This petition is from the past. The only new change we are requesting is the shaded area labeled as U-Haul Parking. Everything else is labeled for your convenience and any work on the plan was done in the past. The previously submitted site plan (Jan 2015) (sic) was too small and was not labeled very well therefore we were asked to provide the larger, to the scale version of the site plan. This plan (attached) was approved by the County in the past therefore we just made the necessary changes for the U-Haul and re-submitting (sic) to the county. The April 7, 2015 Revised Petition shows the new location of the U-Haul use. It is now set back further from the northern lot line and Pine Orchard Road."

2. The Third Plan (The Amended NCU Plan). During the hearing, Petitioner testified to the proposed use of an existing unpaved driveway and informal access off Pine Orchard Lane for the proposed U-Haul rental area use. Because this information was not shown on the April 7, 2015 Revised Plan or referenced in the petition, Petitioner introduced into evidence an amended NCU plan showing the proposed access (the Amended NCU Plan).

### **FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 2<sup>nd</sup> Election District on the northwest corner of the intersection of Baltimore National Pike (US 40) and Pine Orchard Lane. It is identified as Tax Map 24, Grid 1, Parcel 940 and known as 10214 Baltimore National Pike (the Property).

2. Site Description. The 0.92-acre Property has two driveways, separated by grass islands, provide access from US 40. Based on the Hearing Examiner's site visits and the Howard County GIS pictometry image on page 4 of the technical staff report (TSR), there is also what appears to

be an "informal," unpaved (dirt) means of access to the rear of the Property off Pine Orchard Lane. The developed portion of the Property is concentrated in the southern (front) area. Adjacent to US 40 are two, three pump, 32'(w)x49'(d) canopy covered gasoline islands on a concrete island mat. The canopy sits 6.8 feet from the US 40 lot line and the gasoline islands, 15'4". Behind the pump islands area is a one-story, three-bay service building with a convenience store lying about 70 feet from and facing US 40. The TSR estimates the one-story building to be about 80'(w)x 60'(d) (1,680sf). The TSR also states the building was constructed in 1966, based on Maryland Department of Assessments and Taxation information, which indicates the building is 1,680sf. On the south and rear side of the building is an enclosed dumpster. There is also an enclosed area and a small shed on the rear side of the building. The remainder of the front portion of the Property is paved and level. A metal guard rail runs along the east and west sides of the paved area and along the rear of the service building. Beyond the rear guard rail, the topography slopes steeply toward the north (rear) and east and levels off toward the rear property line. The rear area is predominately wooded with scattered trees, bushes and a gravel area near the adjoining property.

During her site visit, the Hearing Examiner observed a well-worn dirt path or drive aisle with significant tire tracks along the eastern side of the property. This dirt area appears to be used as a shuttle area to transport vehicles between the gas station area and the rear or side of the Property and an informal dirt driveway Petitioner proposes to use as the sole means of ingress/egress to the main U-Haul rental area. This dirt driveway is visible in the TSR Howard County GIS imagery from 2015, 2007 and 1984. It does not appear in the 1971 TSR GIS image.

3. Vicinal Properties. The B-2 (Business: General) zoned Parcel to the west is improved with a strip center retail building. The B-1 zoned Parcel/Lot 1053 known as 3280 & 3290 Pine Orchard Lane is improved with a commercial building and parking. Beyond this Property, is a planned townhouse residential development, Towns at Patuxent Orchard (the now wooded area), and beyond this, an apartment complex with more than two hundred units. Across Pine Orchard Lane, to the east are the B-1 zoned commercial buildings known as the Centennial Square development.

4. Zoning History.

**CE 14-080**. Zoning Violation Formal Notice Issued August 21, 2014 for the sale or rental of motor vehicles on B-1 zoned property, the off-street parking of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles on B-1 zoned property, and expansion or enlargement of a nonconforming use to occupy more land area on B-1 zoned property without Hearing Authority Approval. Status: Open.

**BA 80-90V**. Variance to reduce the 30-foot setback from a public street right-of-way (ROW) to 6 feet for the construction of a canopy over existing pump islands on B-1 zoned property. Petitioner: Sunmark Industries. Granted September 7, 1980.

**ZB 705**. Property rezoned to B-1 during the 1977 Comprehensive Rezoning Plan, effective October 3, 1977. Petitioner: Department of Planning and Zoning (DPZ).

**BA 419-E**. Special Exception to construct and operate a gasoline service station in a B-2 Zoning District. Petitioner: Sun Oil Company. Granted January 9, 1963.

5. The Requested Confirmation of Nonconforming Use and Proposed Extension

A. *Confirmation of Nonconforming Use*. Petitioner is seeking nonconforming use confirmation of the gasoline service station (the Gas Station) and two uses associated with the Gas Station, the three-bay service/garage building and a small convenience store within the existing building. The supporting documentation/information that the Gas Station and the two

accessory uses became lawfully nonconforming in 1977, when the Property was rezoned from B-2 to B-1 is evaluated in the Conclusions of Law below.

B. *Extension of the Nonconforming Use.* Petitioner is also requesting approval to extend the nonconforming use with the addition of a U-Haul vehicle rental use. The main part of this use would consist of the proposed 100'(w)x30'(d) area (3,000sf), and per the Amended NCU Plan, a driveway accessed from Pine Orchard Lane. The U-Haul hours of operation are: Mon-Fri: 9 am - 5 pm, Sat: 9 am - 2 pm and Sun: Closed, with a 24 hour drop-off.

6. Mohammad Saifuddin testified to the use of the Property. When asked by the Hearing Examiner, he stated he would be agreeable to landscaping around the main U-Haul rental use area.

7. Karen Furbe, who has a business relationship with the property owner of the property adjoining the north side of the Property, testified in opposition to the petition.

### **CONCLUSIONS OF LAW**

#### **I. Background Issues**

##### **A. Petition/Plan Omissions**

1. The Petition and the Amended NCU Plan: Required Information. As noted in the above Preliminary Matters section, neither the original or revised nonconforming use petitions contain pages 4 and 5. Section 9 of the NCU petition on Page 4 instructs petitioners to include the following on a nonconforming use plan.

No application for a nonconforming use shall be considered complete unless accompanied by a nonconforming use plan. The submitted plans shall be folded to approximately 8 ½ x 14 inches.

The plan must be drawn to scale and must include the items listed below:

- ☐ (a) Courses and distances of outline boundary lines and the size of the property
- ☐ (b) North arrow
- ☐ (c) Zoning of subject property and adjoining property
- ☐ (d) Scale of plan

- ☐ (e) Existing and proposed uses, structures, natural features and landscaping
- ☐ (f) Location and surface material of existing and proposed parking spaces, driveways, and points of access; number of existing and proposed parking spaces
- ☐ (g) Same as (e) and (f) above, of any adjoining property as necessary for proper examination of the petition
- ☐ (h) Location of well and private sewerage easement area, if property is to be served by private water and sewer
- ☐ (i) Election District in which the subject property is located
- ☐ (j) Tax Map and parcel number on which the subject property is located
- ☐ (k) Name of local community in which the subject property is located or name of nearby community
- ☐ (l) Name, mailing address, telephone number (and e-mail address if any) of the Petitioner
- ☐ (m) Name, mailing address, telephone number (and e-mail address if any) of attorney, if any
- ☐ (n) Name and mailing address of property owner
- ☐ (o) Floor area and height of structures, setback distances from property lines, and other numerical values necessary for the examination of the petition
- ☐ (p) Location of subject property in relation, by approximate dimension, to the center line of nearest intersection of two public roads
- ☐ (q) Ownership of effected roads
- ☐ (r) A detailed description of all exterior building materials for all proposed structures
- ☐ (s) Any other information as may be necessary for full and proper consideration of the petition

With the exception of the north arrow, existing structures and proposed extension use, and a note calling out the bituminous driveway associated with the gasoline service station, service bay and convenience store, Petitioner omitted this information. Nor does the petition depict setback line restrictions. The Amended NCU Plan is not drawn to scale.

2. The Proposed U-Haul use access and driveway off Pine Orchard Lane. The proposed access shown on the Amended NCU Plan appears to utilize what the Hearing Examiner observed during her site visit to be an existing dirt driveway ingress/egress. There being no evidence of record to support a finding that this existing driveway was formally approved as a new entrance, Petitioner **must obtain approval for it.**

3. The U-Haul rental use area and driveway surface. Neither the Amended NCU Plan nor the revised petition indicate the proposed surface of the U-Haul Rental area use and driveway. Both are currently undefined dirt areas.

4. Landscaping. No landscaping was proposed to screen/buffer the main U-Haul rental use. During the Hearing, Petitioner agreed to install landscaping around the main U-Haul rental use area. See the evaluation re: landscaping in § 129.0.E.1.d below for a fuller explanation of landscaping issues as it pertains to the main U-Haul vehicle rental area use.

5. U-Haul customer parking. Absent any evidence of record demonstrating otherwise, the Hearing Examiner concludes U-Haul customers who arrive in the vehicle to arrange for and pick up a U-Haul rental will park on the Property and attend to rental transactions with an employee inside the existing building. No parking spaces for this aspect of the proposed nonconforming extension are proposed.

6. U-Haul vehicle drop-off/pickup and employee/customer access to the U-Haul rental nonconforming use extension area. The evidence suggests that Petitioner is using the "informal" dirt path/drive aisle along the eastern Property Line to shuttle vehicles between the current, illegal rear parking area and the building. It is unclear to the Hearing Examiner how employees and customers would access the proposed main U-Haul rental use area, the only U-Haul use referenced in the revised petition and Amended NCU Plan, with the exception of the proposed ingress/egress. The Hearing Examiner necessarily concludes U-Haul customers will pick up their rentals within the main U-Haul use area in the rear of the property. The Amended NCU Plan does not depict any pathway or sidewalk access between the building and the main U-Haul use area.

**B. Conditions of Approval**

All confirmations of nonconforming uses and extensions of confirmed nonconforming uses, when approved, are subject to this qualification: that the confirmed nonconforming use and/or the extension of a confirmed nonconforming use apply only to the land area, uses, and structures as described in the petition and plan submitted and not to any other activities, uses, structures, or additions on the Property, subject to all conditions of approval. Considering the incomplete petitions and the breadth of omissions in the Amended NCU plan and Petitioner's apparent reluctance to submit the requisite information, it is wholly within the Hearing Examiner's discretion to deny both the confirmation of nonconforming use request and the requested extension for failure to comply with all NCU petition and plan requirements and with §§ 129.0.D.1 and 129.0.E.1 (evaluated below), or alternatively, to approve the two requests with all necessary and appropriate conditions. Owing to the proposed new entrance, the potential level of site disturbance and other aspects of the proposed extension, the Petitioner must submit a site development plan (SDP) or SDP waiver plan (aka waiver exhibit) to DPZ for review and

approval.<sup>1</sup> Consequently, the Hearing Examiner concludes the two requests can be granted subject to the below conditions of approval, which shall be included in the SDP or waiver plan to be submitted and approved by DPZ. These approval conditions will ensure that the proposed

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<sup>1</sup> The pertinent Howard County Subdivision and Land Development Regulations are:

Sec. 16.155. - Applicability.

(a) A site development plan, approved by the Department of Planning and Zoning, is required for:

(1) Nonresidential:

(i) New or expanded nonresidential development, including commercial, industrial, institutional and utility development, plus public buildings, schools and other public facilities, but excluding road, water, sewer or drainage improvements and development associated with a use permit approved by the Department in accordance with section 128 of the zoning regulations.

(ii) Any establishment of a use or change in use, unless the Department of Planning and Zoning determines that the establishment or change in use will cause less than 5,000 square feet of site disturbance, that no significant alteration to access, parking, circulation, drainage, landscaping, structures, or other site features is required, and that the proposed use does not qualify as redevelopment that requires stormwater management in accordance with the design manual.

Sec. 16.104. - Waivers.

(a) Authority to Grant. So that substantial justice may be done and the public interest secured, the Department of Planning and Zoning may grant waivers of the requirements of this subtitle in situations where the Department finds that extraordinary hardships or practical difficulties may result from strict compliance with this subtitle or determines that the purposes of this subtitle may be served to a greater extent by an alternative proposal.

(b) Conditions under Which Waiver May Be Granted. The Department of Planning and Zoning may approve a waiver to a provision of this subtitle provided that:

(1) The developer has presented a petition demonstrating the desirability of waiver; if the County requests additional justifying information, the information must be submitted within 45 days of the Department's letter of request. If the information is not submitted by the deadline, the Department shall deny the petition.

(2) The waiver shall not have the effect of nullifying the intent and purpose of this subtitle.

(3) Within 30 days of the date of the Department's decision letter regarding a waiver petition, the developer may submit additional information to support a request for the Department to:

(i) Modify any approval conditions;

(ii) Reverse the Department's denial; or

(iii) Add or delete specific waiver requests.

(4) After 30 days, requests for reconsideration will require a new petition for a waiver and payment of fees in accordance with the adopted fee schedule.

(5) Any waiver to the minimum requirements of this subtitle in regard to a particular subdivision or development shall be appropriately noted on the final plat or site plan.

(c) Period of Validity. The waiver petition, if approved, will remain valid for 12 months from the date of approval or as long as a subdivision or site development plan is being actively processed in accordance with the processing provisions of section 16.144 of this subtitle. Subdivisions or site developments which fail to meet the processing requirements will be required to submit a new waiver request. Waivers granted to extend time limits for plan processing will remain valid for the time duration specified.



extension comport with the NCU petition requirements and §§ 129.0.D.1 and 129.0.E. To avoid repetitiveness, all conditions of approval are here grouped together. Therefore, In addition to all SDP or waiver plan requirements, the plan submitted to DPZ for review and approval shall depict/note contain all these conditions of approval.

1. All bulk regulations setback line restrictions for the entire Property
2. The location of the gasoline service station, the canopy, all fueling pumps and tanks, the main building and all parking and paving associated with the confirmed nonconforming use, including the distances between these uses and structures from all setback line restrictions.
2. The location of the proposed ingress/egress and driveway for the main U-Haul rental use extension of the confirmed nonconforming use. This Decision and Order recognizes that county agencies may require a different configuration and location for the driveway. The location of the driveway relative to all setback line restrictions shall be shown on the plan.
3. The location of the proposed, 100'(w)x30'(d) area (3,000sf) U-Haul rental use and its distance from all setback line restrictions
4. All means of pedestrian (employees and U-Haul vehicle customers) access (foot traffic) to/from the main building and the U-Haul rental use area. No portion of this access shall be located within any setback line restriction without the submission and approval of a variance petition. The construction material and width of this access shall also be shown on the plan.
5. The location of any U-Haul customer parking and distances from all setback line restrictions
6. A landscape plan depicting a Type "D" landscape buffer and show the type of fence to enclose the U-Haul vehicle rental use area. The fence shall be located along the perimeter of this area, behind the landscaping to deter vehicles from damaging the landscaping.
7. An extension of the guard rail fence on the eastern side of the gasoline service station area toward the southern lot line to deter vehicles from using the eastern portion of the Property as a vehicle shuttle area. DPZ shall determine its set back from the US 40 property line or ROW.
8. All additional information required under Section 7 of the NCU petition form

The plan/exhibit shall contain a detailed note block identifying the approved Conditional

Use Case No., the date of approval, all conditions of approval and the following information.

1. All additional information required under Section 7 of the NCU petition form
2. A note or table stating the individual and total square footage of the main building, convenience store and three-bay service garage, all sheds, the U-Haul vehicle rental use area, including the main area, the associated driveway, any U-Haul vehicle customer parking area and all pedestrian walkways
3. A note containing the type of surface to be used on the main U-Haul rental use extension area, the ingress/egress driveway and the pedestrian access/walkway. This Decision and Order recognizes that county agencies may require a different type of notation for how surface areas are called out on the SDP or waiver plan
4. A note stating that all U-Haul vehicle rental drop-offs shall be physically dropped off within the 100'(w)x30'(d) area (3,000sf) U-Haul rental area and that no other area of the Property, including the dedicated driveway, shall be used for drop-offs
5. A note stating that no U-Haul vehicle shall be parked or stored on any portion of the Property other than in the 100'(w)x30'(d) area (3,000sf) U-Haul rental area, including the access driveway.
6. A note containing these Hours of Operation for the U-Haul Rental Use: Mon-Fri: 9 am - 5 pm  
Sat: 9 am - 2 pm Sun: Closed, with a 24 hour drop-off
7. A note stating that the gasoline service station, car repair or U-Haul rental use shall not utilize the eastern portion of the Property to shuttle, park or store vehicles or use any other portion of the Property for the parking or storing of vehicles, except as permitted in the confirmed nonconforming use and the U-Haul vehicle use areas
8. A note stating that the U-Haul vehicle use area gate shall be closed except when vehicles are moved in or out of the area
9. A note stating that only U-Haul vehicles shall be parked or stored in the U-Haul vehicle use area
10. A note stating that no U-Haul vehicle will be washed on-site

**II. Confirmation of Nonconforming Uses (HCZR § 129.0.D.1)**

Pursuant to § 129.0.D.1, a petition for confirmance of a nonconforming use shall contain

the following.

**a. A statement and plans or other illustrations fully describing the magnitude and extent of the nonconforming use.**

The April 7, 2015 Revised Petition and supporting documentation state the use includes the gas station, including the canopy, pumps and pump islands, convenience store and three-bay service garage. The Amended NCU plan, which is actually a 1995 engineering plan called out as a "Development Plan -- Proposed Improvements" in the title block, depicts the gas station and a one-story building in their approximate locations. The TSR notes the April 7, 2015 NCU Plan does not measure true to scale and estimates the building size to be about 80'(w)x 60'(d) (1,680sf). According to Maryland Department of Assessments and Taxation information, the building was constructed in 1966 and it is 1,680sf in area. The convenience store portion of the building is 15'x22' (330sf). The TSR further reasons that the service garage and convenience store are lawfully non-compliant because they are uses customarily associated with gas stations and it notes that the BA 80-09V explicitly references the existence of the three-bay garage.

As to the extent (physical area) of the nonconforming use, the TSR reasons the total acreage of the Property was the subject of BA 419-E, the BA 419-E TSR and BA80-09V, there being no information in these records to indicate otherwise. The TSR also recognizes that historical aerial photographs going back to 1964 show the developed portion of the site as only the front portion. However, the Hearing Examiner recognizes that the Amended NCU Plan shows a fiberglass fuel oil tank and concrete further back into the site, behind the building (noted on the Amended NCU Plan as "to be removed"). On balance, the Hearing Examiner concludes the

evidence supports the entire Property as the extent of the nonconforming use.

**b. A statement identifying the date the use became nonconforming to the use provisions of the Zoning Regulations.**

Petitioner identifies the date the use became nonconforming as October 3, 1977, when the Property was rezoned from B-2 to B-1. With the change in zoning, the use became lawfully nonconforming. The TSR agrees with this date of alleged nonconformance.

**c. Documentation substantiating the existence of the use on the date it became nonconforming and clearly demonstrating the continued and uninterrupted use or operation thereof from the specified date to the time of filing the application. The burden shall be on the property owner to establish the existence of the nonconforming use.**

The petition contains persuasive evidence attesting to the uninterrupted use on the Property since 1963. This evidence includes a March 19, 2015 letter from the Vice-President of Sunoco attesting to the Gas Station having continuously purchased gasoline from Sunoco without any interruption and a March 16, 2015 notarized statement the Gas Station Manager attesting to the continuous use without interruption. The Manager has held this position at the station since 1974. Additionally, the TSR points out that in 1980, the Board of Appeals granted a variance from a 30-foot setback, which is further evidence of continued use without interruption.

**III. Extension, Enlargement or Alteration of Nonconforming Uses (HCZR § 129.0.D.E.1)**

Pursuant to § 129.0.E.1, the Hearing Authority may authorize the extension or enlargement of a nonconforming use or the alteration of a structure containing a nonconforming use, with or without conditions, provided the Petitioner demonstrates compliance with five standards. Based on the testimony and evidence, the Hearing Examiner concludes the proposed U-Haul use is a permissible extension of the lawful nonconforming use because it complies with

these and is therefore granting the requested extension, subject to all conditions of approval.

**a. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;**

The proposal to extend the nonconforming use by adding a U-Haul truck/trailer rental use to the Gas Station use is an accessory use customarily associated with gasoline service stations and, subject to all conditions of approval, would not change the use in any way.

**b. That an enlargement may not exceed 100% of the gross floor area of structures or 100% of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;**

This section does not apply, as no new structures or increase in gross acreage is proposed.

**c. That the boundaries of a nonconforming use may be enlarged only to provide additional parking area;**

As was found above under HCZR § 129.0.D.1.a, the Hearing Examiner concurs with the TSR that the boundary of the nonconforming use is the entire Property. This area, however, does not include the illegal use of the Property for the off-street parking of unregistered, inoperable, wrecked, dismantled or destroyed motor vehicles, which is the subject of CE 14-080.

**d. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located;**

The Amended NCU Plan does not depict the main U-Haul rental use area setback from adjoining property lines, but it appears the main U-Haul use area would meet all required setbacks. See the above condition of approval requiring the Plan submitted to depict all bulk regulations (setback line restrictions). The extension is approved subject to the condition that the U-Haul vehicle rental area use, all U-Haul vehicle customer parking, all means of pedestrian

(employees and U-Haul vehicle customers) access (foot traffic) to/from the main building and the U-Haul rental use area and the proposed driveway comply with the bulk regulations for the B-1 zoning district, which are as follows.

118.0.D. Bulk Regulations

(Also see Section 128.0.A, Supplementary Bulk Regulations.)

1. The following maximum height for structures shall be observed:

- a. Maximum height..... 40 feet
- b. Maximum height for a structure with a pitched roof ..... 48 feet

2. The following minimum structure and use setback requirements shall be observed:

- a. From public street right-of-way..... 30 feet
- Except for parking uses ..... 10 feet
- b. From a residential district other than a public street right-of-way..... 30 feet

**e. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.**

Vicinal properties include the commercial uses fronting on US 40, behind the Property, and across Pine Orchard Lane. Further north on Pine Orchard Lane, however, are a planned townhouse residential development, Towns at Patuxent Orchard (the now wooded area), and beyond this, a growing apartment complex with more than two hundred units. The main access to US 40 for these residences, and perhaps the only access, is Pine Orchard Lane. Consequently these residents, as well as the commercial businesses along the lane, drive past the Property, and the requested U-Haul vehicle rental area use, on a regular basis.

This travel route was recently referenced in Board of Appeals Case 13-011S, approved January 19, 2015, wherein the Hearing Examiner granted a variance for a sign at 3280 & 3290 Pine Orchard Lane (the adjoining property to the north of the U-Haul trailer rental use area). The TSR for this case included a DPZ recommendation that the proposed sign be redesigned, DPZ believing in pertinent part that the large sign at its proposed location was incompatible with the

existing and proposed residences at the north end of Pine Orchard Lane. It is unclear why DPZ's concerns about the sign's impact on vicinal residential properties along Pine Orchard Lane were not echoed in the TSR's evaluation of the requested extension, which describes the area of the Property as "improved with other commercial uses" and the U-Haul vehicle rental use area as adjoining a commercial building parking lot. The Hearing Examiner therefore disagrees with the TSR evaluation and concludes the proposed extension of the nonconforming use for the U-Haul vehicle rental use and attendant traffic, would have adverse impacts on vicinal properties along Pine Orchard Lane, without appropriate conditions. Moreover, to Pine Orchard Lane residents, business operators and customers and other travelers along Pine Orchard Lane, the U-Haul vehicle rental use area will look like a very large parking lot.

For these reasons, the Hearing Examiner finds that a Type "D" landscaping buffer around the entire U-Haul vehicle rental use area is appropriate, with a fence running along the use perimeter and inside the landscaped area, excepting the gate area, to prevent vehicles from damaging the landscaping and to further screen the use.

**ORDER**

Based upon the foregoing, it is this **3<sup>rd</sup> Day of August 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the request for confirmation of the nonconforming use, including the gasoline service station, the convenience store and the three-bay service bay in a B-1 Zoning District is **GRANTED**, subject to all applicable conditions of approval.

That the request for extension of the confirmed nonconforming use for a U-Haul vehicle rental use, in a B-1 Zoning District is **GRANTED**, subject to all applicable conditions of approval.

**Conditions of Approval**

It is **FURTHER ORDERED** that Petitioner shall submit a site development plan, any required preliminary sketch plan or waiver petition plan/exhibit to DPZ for its review and approval.

A. Any such plan or exhibit shall depict the following.

1. All bulk regulations setback line restrictions for the entire Property.
2. The location of the gasoline service station, the canopy, all fueling pumps and tanks, the main building and all parking and paving associated with the confirmed nonconforming use, including the distances between these uses and structures from all setback line restrictions.
2. The location of the proposed ingress/egress and driveway for the main U-Haul rental use extension of the confirmed nonconforming use. This Decision and Order recognizes that county agencies may require a different configuration and location for the driveway. The location of the driveway relative to all setback line restrictions shall be shown on the plan.
3. The location of the proposed, 100'(w)x30'(d) area (3,000sf) U-Haul rental use and its distance from all setback line restrictions.
4. All means of pedestrian (employees and U-Haul vehicle customers) access (foot traffic) to/from the main building and the U-Haul rental use area. No portion of this access shall be located within any setback line restriction without the submission and approval of a variance



petition. The construction material and width of this access shall also be shown on the plan.

5. The location of any U-Haul customer parking and distances from all setback line restrictions.
6. A landscape plan depicting a Type "D" landscape buffer and show the type of fence to enclose the U-Haul vehicle rental use area. The fence shall be located along the perimeter of this area, behind the landscaping to deter vehicles from damaging the landscaping.
7. An extension of the guard rail fence on the eastern side of the gasoline service station area toward the southern lot line to deter vehicles from using the eastern portion of the Property as a vehicle shuttle area. DPZ shall determine its set back from the US 40 property line or ROW.

8. All additional information required under Section 7 of the NCU petition form.

B. The plan/exhibit shall contain a detailed note block identifying the approved Conditional Use Case No., the date of approval, all conditions of approval and the following information

1. All additional information required under Section 7 of the NCU petition form.
2. A note or table stating the individual and total square footage of the main building, convenience store and three-bay service garage, all sheds, the U-Haul vehicle rental use area, including the main area, the associated driveway, any U-Haul vehicle customer parking area and all pedestrian walkways
3. A note containing the type of surface to be used on the main U-Haul rental use extension area, the ingress/egress driveway and the pedestrian access/walkway. This Decision and Order recognizes that county agencies may require a different type of notation for how surface areas are called out on the SDP or waiver plan.
4. A note stating that all U-Haul vehicle rental drop-offs shall be physically dropped off within the 100'(w)x30'(d) area (3,000sf) U-Haul rental area and that no other area of the Property, including the dedicated driveway, shall be used for drop-offs.
5. A note stating that no U-Haul vehicle shall be parked or stored on any portion of the Property other than in the 100'(w)x30'(d) area (3,000sf) U-Haul rental area, including the access driveway.
6. A note containing these Hours of Operation for the U-Haul Rental Use: Mon-Fri: 9 am - 5 pm Sat: 9 am - 2 pm Sun: Closed, with a 24 hour drop-off.
7. A note stating that the gasoline service station, car repair or U-Haul rental use shall not utilize the eastern portion of the Property to shuttle, park or store vehicles or use any other portion of

the Property for the parking or storing of vehicles, except as permitted in the confirmed nonconforming use and the U-Haul vehicle use areas.

8. A note stating that the U-Haul vehicle use area gate shall be closed except when vehicles are moved in or out of the area.

9. A note stating that only U-Haul vehicles shall be parked or stored in the U-Haul vehicle use area.

10. A note stating that no U-Haul vehicle will be washed on-site.

C. Additional Approval Conditions and Notices

1. The approval of the extension is subject to DPZ's approval of a site development plan or waiver plan that includes all the above conditions of approvals.

2. The Hearing Examiner recognizes that the site development plan or waiver plan/exhibit requirements may impose different technical requirements.

3. Petitioner is on notice that failure to submit and receive approval of a site development plan or waiver petition plan and/or any other plan required by Howard County within a reasonable time may result in further code enforcement action.

4. Petitioner is on notice that Howard County is considering amendments to gasoline service station zoning regulations that may affect the confirmed nonconforming use and the extension of the use for a U-Haul vehicle use.

5. This Decision and Order does not approve or address any signage on the Property. Petitioner must obtain or have obtained permits for all signage, including any U-Haul signage.

6. Petitioner shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER



Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.