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EDWARD C. GIBBS, JR.
THOMAS H. HALLER

April 14, 2015

Ms. Carrol Everett
Board of Zoning Appeals
Charles County Maryland
200 Baltimore Street
LaPlata, Maryland 20646

Re: Special Exception Docket #1325
Waldorf Restaurant, Inc. (Applicant)
Special Exception to Allow Retail Sales
Greater Than 100,000 Square Feet on One Floor

Dear Ms. Everett:

I represent Waldorf Restaurant, Inc., the applicant in the referenced Special Exception. We are in receipt of the report prepared by Kirby Blass of the Department of Planning and Growth Management concerning the referenced special exception. The staff report recommends approval of the special exception subject to 18 conditions. We appreciate the staff's recommendation of approval as we believe that to be entirely consistent with the applications' conformance to all relevant special exception criteria. However, we do take exception to certain of the conditions.

My client has no objection to most of the objections. However, on behalf of my client, I must register its stringent objection to the following conditions:

Condition 5 - My client has no objection to providing the 15-foot buffer yard where required. However we must request that the final sentence of Paragraph 5 be deleted. That sentence would require the installation of a landscape berm along the rear of the property to screen the building from the proposed Western Parkway. My client is not able to construct a berm in this area

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due to the grade of slope. Instead, we have proposed a retaining wall and a second screen wall located above the retaining wall. It is not physically possible to construct a berm. However, the slope, as shown on the proposed building elevations, will be extensively landscaped. Therefore, we request that the final sentence contained in Condition 5, which provides as follows: "In addition, a landscaped berm shall be provided along the rear of the property to adequately screen the building from the proposed Western Parkway" be removed from the Condition. The balance of Condition 5 is unobjectionable.

Condition 9 - My client requests clarification with regard to Condition 9. Condition 9 is no more than a statement of the law. It is our understanding that we are not proposing any prohibited use of the Resource Protection Zone which would constitute a violation of Section 297-174 of the Zoning Ordinance.

Condition 12 - We object to this Condition and request that it be deleted. It is my client's belief that there is no authority in the Zoning Ordinance for the staff to conduct an Adequacy of Transportation Facilities Test at the time of site development plan review. Adequacy of Transportation Facilities for the entire Waldorf Station project was examined and found to be acceptable (subject to certain road improvements) by the Planning Commission when it approved the Preliminary Subdivision Plan for Waldorf Station. In addition, the Board of Appeals will also review transportation issues within the context of this special exception to determine whether or not approval of the special exception would adversely impact health, safety and welfare of residents or workers. This proposed condition as drafted could create a situation where staff could take a position adverse to and in opposition with positions taken by either the Planning Commission, the Board of Appeals, or both.

The staff apparently attempts to justify this Condition pursuant to Section 297-415(H) (6). Section 297-415 provides general approval criteria for special exceptions. Therein, Section 297-415(H) (6) provides as follows:

"Will provide adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities or improvements. If a use requires an adequate public facilities review by the Planning Commission, such review shall be made a condition of the granting of the special exception by the Board." (emphasis supplied).

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Clearly, an adequate public facilities finding is required to be added by the Board to the approval of a special exception when the use in question requires an adequate public facilities review by the Planning Commission. Here, the use does not require a separate adequate public facilities review by the Planning Commission. However, the Planning Commission did determine adequacy of transportation facilities to exist for the entire Waldorf Station project when it approved the preliminary subdivision plan for the entire project. In any event, the language of this section would, under no circumstances, authorize the staff of Planning and Growth Development to substitute itself for the Planning Commission. The statutory provision in question is clear and unambiguous in that respect. Again, and as noted above, the Board of Appeals will also consider the impact of any transportation issues when it determines whether or not the proposed use will create an adverse impact on health, safety and welfare. Simply put, it is the applicant's very firm belief and understanding that there is no authorization for yet another new adequate public facilities test for transportation.

Condition 13 - This Condition deals with access and turning movements. We submit these issues have already been addressed and approved previously for the overall Waldorf Station project. Therefore, it is inappropriate to have yet another condition regarding this issue attached to the approval of this special exception.

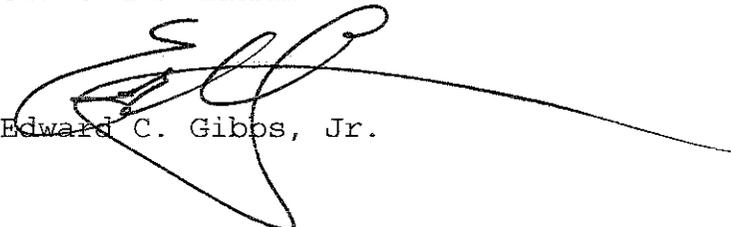
Condition 14 - We request that the final sentence as set forth in proposed Condition 14 be deleted for the same reasons as we take exception to Condition 12.

Condition 17 - We request that this Condition also be deleted for the same reasons as are explained in our objection to Condition 12.

With the exception of the conditions specifically referenced above, my client has no objection to any of the remaining recommended conditions.

Very truly yours,

GIBBS AND HALLER



Edward C. Gibbs, Jr.

cc: Page Wyrrough, Esq.
Pat Faux
Matthew Clagett, Esq.