

ORDINANCE NO. 7240-16

AN ORDINANCE GRANTING CONDITIONAL USE PERMIT NUMBER CU-15-357 FOR THE HEREINAFTER DESCRIBED PROPERTY FOR THE PURPOSE OF PERMITTING THE OPERATION OF AN AUTOMOBILE GASOLINE SUPPLY STATION ON A SITE ZONED C2 GENERAL COMMERCIAL DISTRICT.

WHEREAS, application number CU-15-357 has been made by **BOWDITCH ON JEFFERSON, LLC, the owner, and 7-ELEVEN, INC., the applicant**, for a conditional use permit for the hereinafter described property for the purpose of permitting the operation of an automobile gasoline supply station on a site zoned C2 General Commercial District; and

WHEREAS, the application has been referred to the Planning Commission of the City of Newport News for recommendation and has been duly advertised as required by law and the said Planning Commission has made its recommendation.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News:

(a) That conditional use permit number CU-15-357 is hereby granted for the property described in paragraph (b) hereof for the purpose of permitting the operation of an automobile gasoline supply station on a site zoned C2 General Commercial District; and

(b) That the property, hereinafter referred to as the "Property," to which the conditional use permit applies is particularly described below:

PARCEL ONE - 11060 Warwick Boulevard

All that certain lot, piece or parcel of land situate, lying and being in the City of Newport News, Virginia, containing .723 acres, as shown on a certain plat entitled, "Plat of Property of Gulf Oil Corporation, #11060 Warwick Boulevard", dated November 29, 1962, revised December 26, 1962, by W. B. Sours, C.L.S. and C.E., Hampton, Virginia, the tract hereby conveyed being, in particular, described as follows:

Beginning at a monument on the east line of Warwick Boulevard, the said monument being 170 feet, more or less, south of the intersection of the south line of Colonial Place with the east line of Warwick Boulevard, thence clockwise in an arc on a radius of 1203.80 feet a distance of 192.91 feet along the easterly line of

Warwick Boulevard in a southerly direction to a monument; thence counter-clockwise in an arc having a radius of 25 feet along the intersection of Warwick Boulevard with a proposed new street designated Logan Place a distance of 42.52 feet to a monument; thence along the north line of Logan Place North 86° 22' 10" east 124.22 feet to an iron pin; thence 3° 45' west 220.98 feet to an iron pin; thence south 86° 15' west 140 feet to a monument which is the point of beginning.

PARCEL TWO - 11072 Warwick Boulevard

All that certain piece or parcel of land situate, lying and being in the City of Newport News, Virginia, and fronting 165 feet on Warwick Boulevard and running back along Colonial Place a distance of 137 feet and being that certain parcel shown as 0.54 acres on that certain plat entitled, "Plat of the Property of Robert E. and Susie Acree, Parts of Lots 1 & 2, C. K. Enos Subdivision, Newport News, Virginia", dated December 29, 1964, made by Coenen & Associates, Engineers, a copy of which is attached to deed dated February 22, 1965 from Robert E. Acree, et ux, to Marian M. Bowditch, recorded in the Clerk's Office of the Circuit Court (formerly Hustings Court) for the City of Newport News, Virginia, on February 24, 1965, in Deed Book 568, page 472, to which reference is here made.

The Property has a street address of 11060 and 11072 Warwick Boulevard and Real Estate Tax I.D.#s 253.00-01-21 and 253.00-01-19, respectively.

(c) That this conditional use permit is granted subject to the following conditions, each of which shall be implemented upon approval of this ordinance:

1. A class 1 site plan shall be submitted to and reviewed by the Site Plan Review Committee and be approved by the Director of Engineering. This site plan shall be in general conformance with the Concept Plan prepared by Blakeway Corp. as revised October 23, 2015, identified as Appendix A-2, which is attached hereto and made a part hereof, and shall conform to this conditional use permit, the City's Site Regulations and the Zoning Ordinance.
2. Building elevations and exterior building materials for the Property shall be consistent with the drawings prepared by Vertical Construction submission date September 18, 2015 "7-Eleven Site No. 1038034" and identified in Appendix A-3, which is attached hereto and is made a part hereof. Full bricks shall be used to construct all facades. Final drawings shall be

reviewed and approved by the Director of Planning prior to the issuance of a building permit.

3. The applicant shall cause a 20-foot transitional buffer area to be installed and maintained in perpetuity along the Property's eastern boundary.
4. The applicant shall install a 6-foot tall wood privacy fence along the eastern property line. The design of the fence shall be submitted to the Department of Planning and approved by the Director of Planning prior to the issuance of a fence permit.
5. Fuel tank ventilation apparatus shall not be installed adjacent to Warwick Boulevard, Logan Place or Colonial Place.
6. A landscape plan in conformance with the requirements of the Site Regulations shall be submitted to and approved by the Director of Planning prior to site plan approval. All landscaping shall be installed in accordance with the approved plan and shall be maintained in a healthy condition in perpetuity. The use approved by this permit shall not commence until the landscaping has been installed.
7. The applicant shall implement the improvements as recommended in the September 10, 2015 Traffic Impact Assessment (TIA) prepared by Bryan B. Goodloe, P.C. as revised per recommendations by the Department of Engineering as follows:
 - Install one stop controlled right in/right out entrance to the site on Warwick Boulevard.
 - Install one stop controlled standard site entrance on Logan Place.
 - Install one stop controlled standard site entrance on Colonial Place.
 - Install sidewalks with handicap ramps for the entire site frontage along all three public streets.
 - Improve pedestrian accommodations at the intersection of Warwick Boulevard and Logan Place by installing pedestrian signal heads, pedestrian signal buttons and associated components across all four approaches.
 - Colonial Place shall be improved to a standard 50-foot right-of-way. The applicant shall provide a dedication and additional pavement, curb/gutter and sidewalk for half of the standard 50-foot right-of-way local street section.
8. Only one freestanding sign shall be permitted on the Property. The sign shall be a monument style sign no taller than eight (8) feet measured from the highest point of the sign area structure to the top of the curb. The sign

shall be no more than 50 square feet. All sign design and materials shall be reviewed and approved by the Director of Planning.

9. All signs, including directional signs, location, design and materials shall be reviewed and approved by the Director of Planning.
10. No temporary or portable signs shall be permitted on the Property. Signage placed in or on any window of the building shall be limited to no more than 25 percent of each window.
11. There shall be no signage on the fueling stations other than that required by law for safety.
12. Signage on the canopy shall be limited to the placement of a logo.
13. All outdoor storage and displays of saleable items shall be prohibited excluding those items located in vending machines or enclosed areas.
14. All vacuum and air supply equipment shall be screened from public rights-of-way. Screening materials shall be approved by the Director of Planning prior to site plan approval.
15. All dumpsters and HVAC systems shall be screened from adjacent properties and rights-of-way with materials and design to match the building and shall be approved by the Director of Planning prior to site plan approval, and shall be maintained in such condition in perpetuity.
16. All lighting on the Property shall be consistent with those standards recommended by the Illumination Engineering Society of North America (IESNA). A photometric lighting plan indicating the number and type of lighting shall be submitted for review and approval by the Director of Engineering. Lighting shall be installed and operated as shown on the approved plan. Lighting shall be directed inward and downward on the Property so that such lighting does not spillover onto adjacent properties.
17. The playing of music on any outdoor speakers shall be prohibited.
18. The applicant shall cause a plan ("the Plan") to be prepared for the installation and operation of digital video equipment (the "Equipment") with recording devices and capability sufficient to include date and time the recording is made. The Equipment shall provide surveillance coverage encompassing the front, side and rear exteriors of the use permitted by this ordinance. The Plan shall be submitted for review and approval by the Police Department. The Plan shall include an operational period for the

Equipment, which shall include all operating hours of the business and one hour or more after the close of business. Once the Plan is approved, the applicant shall install the Equipment in accord with the provisions of the Plan; and operate, record, and maintain the Equipment to provide for the required surveillance coverage. The Equipment and recordings made thereby shall be subject to periodic inspection by the Police Department at reasonable times. Commencement of the use authorized by this conditional use permit shall constitute acceptance of the conditions of this permit, including consent for such inspections. Surveillance tapes or recorded data must be maintained in a condition permitting review of the information recorded or stored therein or thereon for a period of time no less than thirty days.

19. The applicant shall provide written notice to the Director of Planning in the event of the cessation of fuel dispensing activity at the automobile gasoline supply station. Such notice shall be provided no later than seven days after such fuel dispensing activity ceases, as each event occurs.
20. In the event a fuel dispensing activity ceases at the automobile gasoline supply station for a period in excess of twelve (12) months:
 - a. The tanks, fueling equipment (including the gas pumps and fueling islands) shall be removed;
 - b. The canopy shall be removed; and
 - c. The real property on which the improvements listed in subsection (a) and (b) above are placed or constructed shall be restored to the same grade or condition as the remainder of the parking lot and maintained either as landscaped green area or as paved area until a new site plan for the site has been approved by the City.
21. Prior to operating the use permitted by this conditional use permit, a bond in an amount deemed appropriate by the Director of Planning and in a form deemed appropriate by the City Attorney shall be posted by the applicant with the City and maintained for one year after the conditional use permit expires to ensure that the applicant will restore the real property as required in condition 20. a, b, and c.
22. There shall be maintained on the Property an auxiliary generator or generators sufficient in size and capacity to operate all fueling stations during electrical outages or the facility shall be pre-wired for and provided with mobile generator(s) by contract or by transfer of generator(s) owned by Applicant to the site. The mobile generator(s) and the facility shall be

operable within twelve (12) hours of the National Weather Service posting a warning for the City of Newport News of a named tropical storm or named hurricane or within twelve (12) hours of the occurrence of a winter storm which disrupts power to the Property.

23. If approved, the ordinance approving this conditional use permit shall be prominently displayed within the establishment at all times until the use is abandoned.
24. The applicant, as well as successors, assigns and agents, if any, shall comply with all of the conditions stated herein, as well as all codes, ordinances and regulations of federal, state and local governments.
25. The applicant, as well as successors, assigns, and agents, if any, shall obtain all necessary licenses, approvals, conditional approvals, and permits prior to commencing any use, which is authorized by this conditional use permit or law. Furthermore, the applicants, as well as successors, assigns, and agents shall maintain all necessary licenses, approvals, conditional approvals, and permits for the entire period of time during which the real property, whether improved or otherwise is put to a use which is authorized by this conditional use permit.
26. A Certificate of Use and Occupancy shall be obtained prior to the occupancy of, or the operation of, any use of the Property. If applicable, the use approved by this conditional use permit shall not begin until a site plan is approved and fully implemented. If applicable, any landscaping component of the site plan shall be maintained in a healthy condition for the duration of the use authorized by this permit.
27. Violation of any of the above conditions or safeguards attached thereto shall be deemed a violation of the Zoning Ordinance, and, in addition, and notwithstanding any other provision of law, shall serve as grounds for revocation of the conditional use permit by City Council.
28. Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; therefore, the conditions contained in this conditional use permit are not severable; in the event that any condition contained herein, or part thereof, is found by a court of competent jurisdiction to be invalid, unconstitutional, or otherwise unenforceable, then this conditional use permit shall be void and the use permitted by this conditional use permit shall cease. If this conditional use permit becomes void as a result of a condition or a part thereof, or conditions therein, being ruled invalid, unconstitutional or otherwise unenforceable, the property

owner shall be afforded the right to reapply for a conditional use permit.

29. Notwithstanding any other provision of law, this conditional use permit is being approved due, in part, to the mitigating effects of each and every condition contained herein; as such, in the event an amendment to the zoning of the property described in Section (b) hereof is produced by a comprehensive implementation of a new or substantially revised Zoning Ordinance, the conditions imposed by the conditional use permit shall continue in effect.

(d) That this conditional use permit shall be deemed to have been abandoned and shall be revoked:

1. If the construction of the improvements or occupancy authorized by this conditional use permit has not commenced within twenty-four (24) months of January 12, 2016, or
2. In the event of the continuous nonuse of the property as herein permitted for a period of twelve (12) months.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JANUARY 12, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

