

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use No. 18816-03-U requesting certification of a nonconforming car wash in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on July 8, 2004, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located south of Shadyside Avenue, approximately 180 feet east of Suitland Road. The site measures about .24 acre. It is developed with a self-serve car wash with four bays and a concrete/block kiosk.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	C-S-C	C-S-C
Use(s)	car wash (not in operation)	car wash
Acreage	.24	.24

C. **History:** The car wash on the subject property was constructed in 1969, when the property was in the C-2 Zone and the use was permitted without a special exception. In 1976 the District Council amended the Zoning Ordinance to require a special exception and set forth minimum acreage and setback requirements. The subject car wash became nonconforming in 1977 when CB-119-1976 went into effect.

D. **Master Plan Recommendation:** The 1985 Approved Master Plan for Suitland-District Heights and Vicinity recommends retail commercial uses for the subject property. The site is in the Developed Tier of the 2002 General Plan.

E. **Request:** The current owner seeks to certify this use as nonconforming.

F. **Surrounding Uses:**

North: Apartments in the R-18 Zone and single-family detached dwellings in the R-55 Zone.

East: An M-NCPPC park site in the R-55 Zone.

South and West: Commercial uses in the C-S-C Zone.

G. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning or have been established in accordance with all

regulations in effect at the time it began. Second, there must be no break in operation for more than 180 days since the use became nonconforming. **Section 27-244** sets forth the specific requirements:

- 1. In general, a nonconforming use may only continue if a use and occupancy permit identifying the use as nonconforming is issued after the Planning Board (or its authorized representative) certifies that the use is really nonconforming and not an illegal use.**
- 2. Application for Use and Occupancy Permit:**
 - a. The applicant shall file for a use and occupancy permit.**
 - b. Along with the application and accompanying plans, the applicant shall provide the following:**
 - (1) Documentary evidence, such as tax records, business records, public utility installation or payment records and sworn affidavits showing the commencing date and continuous existence of the nonconforming use.**
 - (2) Evidence that the nonconforming use has not ceased to operate for more than 180 consecutive calendar days between the time the use became nonconforming and the date when the application is submitted or that conditions of non-operation for more than 180 consecutive calendar days were beyond the applicant's and/or owner's control, were for the purpose of correcting Code violations or were due to the seasonal nature of the use.**
 - (3) Specific data showing:**
 - (i) The exact nature, size and location of the building, structure and use.**
 - (ii) A legal description of the property.**
 - (iii) The precise location and limits of the use on the property and within any building it occupies.**
 - (4) A copy of a valid use and occupancy permit issued for the use prior to the date upon which it became a nonconforming use, if the applicant possesses one.**

The applicant does not have a use and occupancy permit issued for the car wash. Therefore, the Planning Board must determine whether, in fact, the use was legally established prior to the date it became nonconforming and has been in continuous operation since that time.

H. Documentary Evidence:

Aerial photographs in the county's database show the presence of the car wash structure in 1965, 1993 and 2000. The applicant has provided the following documentary evidence in support of this application:

1. A copy of Permit No. 1100-76-U issued in 1976 to a prior owner for the operation of an "automobile laundry, no gasoline sales."
2. A bill of sale for equipment to a prior owner, March 19, 1976.
3. A letter from WSSC indicating that water service was established at 2606 Shadyside Avenue on August 1, 1964.
4. Receipts from the former lessee who operated car wash October 1997–October 1998.
5. A lease agreement between previous owner, Janet McKay, and Nicky Simmons and Richard Carr, March 6, 2001.
6. PEPCO bills for 2606 Shadyside Avenue from May 2002 to April 2003.
7. Personal property tax return of previous owner.
8. WSSC list showing water consumption from June 1995 to February 2002.
8. Landlord's complaint for repossession of rented property for failure to pay rent, November 30, 2001.
9. Trial docket, District Court of Maryland, November 30, 2001 to April 22, 2002.

In addition, the applicant has submitted several letters and affidavits in support of this application:

1. October 2003 affidavit of William Virgin, who owned the car wash from 1976 to 1998, and who transferred ownership to his daughter, Janet McKay, in 1998.
2. June 2004 affidavit of John Forbes who attests to personal knowledge of the continuous operation of the car wash for 25 years.

I. **Discussion:** The above-listed evidence indicates that the use was in continuous operation from prior to 1977 to late in 2001. At that time, the lessees, Nicky Simmons and Richard Carr, who had signed a lease for March 2001 to March 2004, decided to stop operating the business. The prior owner, Ms. McKay, went to court to recover lost rent and repossess the property. The case was continued several times and was ultimately settled out of court. During that time Ms. McKay put the property up for sale, and the current owner and applicant purchased the car wash in May 2003. The applicant has installed all new equipment and is ready to operate, but has been unable to do so since he does not have a use and occupancy permit. Staff concurs with the applicant that the cessation of operation for more than 180 days was beyond the control of the applicant and prior owners of the property.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted application.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Vaughns, seconded by Commissioner Eley, with Commissioners Vaughns, Eley, Harley, Squire and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, July 8, 2004, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 8th day of July 2004.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:CW:rmk

(Revised 8/9/01)