

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-25205-2006 requesting Certification of a Nonconforming Use 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 December 13, 2007, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property is located on the south side of Brandywine Road approximately 1,000 feet west of its intersection with Branch Avenue in Brandywine. According to the site plan, the property is developed with a one-story structure with an addition used for storage (totaling 4,200 square feet, including 250 feet of office space), a one-story storage "barn" along the eastern property line, and a gravel storage yard. Staff visited the site and found that the building, addition and barn roof are constructed of masonry and corrugated metal. The building is in fair condition; the addition is in poor condition. A six-foot-high chain-link fence extends along the western property line. A six-foot-high stockade fence is located along the front of the building to the property line on each side. Another stockade fence is located inside the property from the east rear corner of the building to the property line, creating a front storage yard. Behind the stockade fence is a larger storage yard. The stockade fence is in an advanced state of disrepair and has collapsed in areas. The storage areas contain a significant amount of junked material, including several rusted tractor trailers (used for storage), abandoned vehicles, stainless steel countertops, refrigerators, coolers, stoves, and other discarded restaurant equipment and refuse. One side of the property not contained within a fenced area is littered with an open trailer, a bike, scrap metal, trash and other detritus which appeared dangerous (rusted metal with sharp edges and an unsecured trailer) and is extremely unsightly. The property did not appear to be open for business. Access is directly from Brandywine Road; there is no access driveway or defined parking area (with curbs and striping).
- B. **History:** According to tax records, the original structure on the property was constructed in 1946, prior to any zoning restrictions for the area. The property was first placed in the R-R Zone on April 24, 1961. By that time, the property had been used as a metal fabrication business. In September, 1978 the property was rezoned to the R-A Zone. The subject property was rezoned once again back to the R-R Zone in September 1993. The current owner purchased the property in 1974 and has continued to use the site for storage, fabrication, and assembly of refrigeration equipment and metal counters, cabinets and tables. The property owner has leased the property to the current occupant since 2004, who also has continued to operate the same use. The use has operated without a Use and Occupancy permit since the use commenced in 1946. DER discovered the violation during a routine inspection of the property. The property is currently the subject of a court order due to the numerous zoning violations, including the lack of a valid Use and Occupancy permit. The owner of the property is in the process of addressing the violations and cleaning up the entire site.

- C. **Master Plan Recommendation:** The *September 1993 Approved Master Plan and Sectional Map Amendment for Subregion V* rezoned the subject property from the R-A Zone to the R-R Zone and recommends low suburban residential land use. The SMA acknowledged the various existing commercial uses in the area. The R-R Zone was intended as a base density zone for comprehensive design zone applications. The 2002 General Plan places the site in the Developing Tier. The General Plan vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable.
- D. **Request:** The applicant requests certification of a contactor's office with outdoor storage in the R-R Zone. The R-R Zone prohibits the requested use. The applicant has stated that the property has been used for the same type of business from 1946 to the present with no gap in operation greater than 180 days.
- E. **Surrounding Uses:** The immediate area surrounding the property is generally characterized by single-family residential developments. The adjoining properties to the north, south, east and west are all zoned R-R. Adjacent to the subject property on the west is a daycare facility for 12 children. (The property is the subject of a pending Special Exception SE-4592 to allow up to 101 children). Northeast of the property is the Brandywine Waldorf Medical Clinic in the C-O Zone.
- F. **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 for certifying a nonconforming use:

- (a)(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) or the District Council certifies that the use is nonconforming and not illegal.**
- (b)(1) **The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**

(b)(2) Along with the application and accompanying plans, the applicant shall - provide the following:

- (A) 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;**
- (B) 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 nonoperation 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;**
- (C) Specific data showing:**
 - (1) The exact nature, size, and location of the building, structure, and use;**
 - (2) A legal description of the property; and**
 - (3) The precise location and limits of the use on the property and within any building it occupies;**
- (D) 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.**

G. **Analysis:** The applicant has submitted evidence indicating the existing use was established prior to zoning, therefore the use is presumed to have been lawfully established prior to the date it became nonconforming. The Planning Board, in accordance with Section 27-244(f), must determine that the use has been in continuous operation since the date it became nonconforming.

The applicant submitted the following documentary evidence in support of the application:

1. Maryland Department of Assessments and Taxation record indicating the structure was built in 1946 and used as a warehouse.

2. Letter dated September 13, 2007 from SMECO indicating service was provided to the site as of November 7, 1972.
3. Affidavit of Peter Thir, notarized January 3, 2007, who co-owned the property prior to 1961 until its sale to the current owner in 1974.
4. Affidavit of Richard H. Dobson, MD, notarized March 28, 2007, who has owned and/or operated a medical clinic across the street from the subject property since 1958.
5. Affidavit of Richard Fallon, notarized December 8, 2006, who is the current owner of the subject property.
6. Affidavit of Linda H. Reamy, notarized January 21, 2007, who has been a neighbor of the subject property since 1950.

The applicant provided tax information indicating the structure, which was identified as a warehouse and constructed in 1946, prior to zoning regulations. The Southern Maryland Electric Cooperative (SMECO) was able to establish that service was available to the property as of November 7, 1972. The applicant has submitted sworn affidavits from the previous and current owners affirming that the property was continuously used as a metal fabrication business. In the past, the Planning Board has determined sworn affidavits to be adequate evidence that a nonconforming use has been in continuous operation.

DISCUSSION:

In the Board's opinion, the above evidence supports the applicant's claim that the metal fabrication/ outdoor storage business has been in continuous operation prior to 1961 when the use became nonconforming. However, before the applicant can be issued a Use and Occupancy permit, the property must be restored to its original condition at the time it became nonconforming, or, the applicant shall be required to obtain a special exception for the alteration and expansion of the nonconforming use. Aerial photography from 1965 shows a structure on the subject property with a small cleared area presumably used for parking and/or storage. Approximately one half of the site contained woodland. Aerial photography from 2005 indicates that the use has been significantly expanded to include additions onto the main building and the addition of a storage "barn" along the eastern property line. Outdoor storage has replaced virtually all of the area previously shown as woodland. The applicant has indicated on the site plan the areas to be excluded from the nonconforming use certification.

CONCLUSION:

Based on the documentary evidence provided by the applicant and the lack of contradictory evidence from other sources, the Board concludes that the subject property can be certified as a nonconforming use for a metal fabrication/warehouse business with outdoor storage

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 recommends APPROVAL the above-noted application, subject to the following condition:

Prior to obtaining a Use and Occupancy permit the applicant will be required to either apply for a special exception to retain the alterations to the property which occurred after April 24, 1961 or remove the alterations and restore the property to its former condition.

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 Clark, seconded by Commissioner Vaughns, with Commissioners Clark, Vaughns, Squire, Cavitt and Parker voting in favor of the motion at its regular meeting held on Thursday, December 13, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 3rd day of January 2008.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator