

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-32092-2008, Webb’s Grocery Store requesting certification of a gasoline pump and sales in the C-S-C zone 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 February 12, 2009, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject property, at 14125 Brandywine Road, is located on the south side of Brandywine Road, directly south of its intersection with Cherry Tree Crossing Road. The property is zoned C-S-C. The subject property is comprised of 22,830 square feet of land and is currently improved with a one-story frame building that contains a country grocery/convenience store known as Webb’s Grocery Store. The subject use also includes a gasoline station with one pump island. Access to the site is via Brandywine Road. A gravel parking area is situated behind the existing one-story building. A portion of the parking areas surround the building however, is paved.

B. **Development Data Summary**

	EXISTING	APPROVED
Zone(s)	C-S-C	C-S-C
Use(s)	Grocery store with gasoline pump and sales	Grocery store with gasoline pump and sales
Acreage	0.52	0.52

C. **History:** The subject property was incorporated into the Maryland-Washington Regional District on April 8, 1965, and placed the subject property in the C-2 Zone. At that time, a special exception was required for all gasoline stations located in the C-2 Zone. Since this gasoline pump and sales had predated the date of annexation of the property into the Regional District, the use became nonconforming. The 1978 Sectional Map Amendment (SMA) for Clinton-Tanglewood and Brandywine reclassified the site to the C-S-C Zone.

D. **Master Plan Recommendation:** The September 1993, *Approved Master Plan and Sectional Map Amendment for Subregion V, Planning Areas 81A, 81B, 83, 84, 85A and 85B* retained the property in the C-S-C Zone. This application is in conformance with the land use recommendations of the 1993 Subregion V Master Plan and Sectional Map Amendment for commercial land use. The 2002 *Prince George’s County Approved General Plan* shows the property in the Developing Tier. The 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.

- E. **Request:** The applicant requests certification of a nonconforming use of gasoline pump and sales in conjunction with the grocery store in the C-S-C Zone. The C-S-C Zone does not permit a gasoline pump without special exception. The applicants' statement of justification affirms that the property had been continuously used as a grocery store with gasoline pump and sales since circa 1950 up until February 2, 2008.
- F. **Surrounding Uses:** The immediate area surrounding the property is characterized by commercial uses, such as retail stores and contractor services. The subject property and the neighboring properties to the north side across Brandywine Road, south and west side of the subject property are zoned C-S-C. The properties located in the east side, contiguous to the site, is zoned C-M.
- G. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate the pertinent zoning regulation 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 of the Zoning Ordinance sets forth the following 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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).**
- (b)(1) **Application for use and occupancy permit, 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:

- (i) The exact nature, size, and location of the building, structure, and use;**
- (ii) A legal description of the property; and**
- (iii) 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.

Analysis: The applicant did not provide any documentary evidence such as tax records, business records, public utility installation or payment records showing that the use had not ceased to operate for more than 180 consecutive calendar days between the time the use became nonconforming (April 8, 1965) and the date when the application was submitted (May 22, 2008). The applicant also does not possess a copy of a valid use and occupancy permit issued for the gasoline pump and sales prior to the date upon which it became a nonconforming because no such permit was ever issued. However, as evidence of a continuous use of the existing fuel station, the applicant has submitted the following documentation in support of this application:

1. Letters from Besche Oil Company dated February 15, 2008 and March 4, 2008, stating that the company had been delivering gasoline and kerosene to the proposed site since 1966 and has been doing so until February 2, 2008. It also stated that Brahmhatt's took over the Webb's store in 1976.
2. A sworn affidavit from the adjoining home building business operator, Mr. Middleton dated December 22, 2008, attesting that the Webb's Grocery Store with gasoline, was in operation and has been in continuous operation since circa 1961 until February 2008.
3. A sworn affidavit dated December 22, 2008, from Mr. Larry Wilkerson a long time resident from Brandywine Heights Subdivision, who attests to personal knowledge of the continuous operation of the gasoline pump located in front of the Webb's Store since 1950s up until February of 2008.
4. 1965 Aerial Photo from Prince George's County Geographic Information database structure system showing the existence of the gasoline pump, structure.
5. A deed showing that the proposed site was owned by Brahmhatt since 1997.

The foregoing documents, the letters from Besche Oil Company and the affidavits from the neighbors, provides sufficient documentation to suggest that the use was legally established prior to the date upon which it became nonconforming and that it has been in continuous operation without interruption until February 2008. Additionally, the staff had obtained the previously approved site plan (drawn in 1965) from the permit section for the approved grocery store located on the subject property to further confirm the existence of the gasoline pump and its location on the site. The Maryland-National Capital Park and Planning Commission (M-NCPPC) Permit Review Section plan and its comments generated on October 10, 2008, indicated that a Use and Occupancy permit was issued on the property in 1976 (permit no. 1009-76-U) for a grocery store. The site plan that was approved with this permit no. 1009-76-U was prepared in January 1965 also had an existing gasoline pump island. All these documents in addition to the documents provided by the applicant further demonstrate the existence of the gasoline pump and its location on the site. Nonetheless, in accordance with Section 27-244(f) of the Zoning Ordinance, the Planning Board must determine whether, in fact, the use was legally established prior to the date it became nonconforming and that it has been in continuous operation since that time.

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 Squire, seconded by Commissioner Cavitt, with Commissioners Squire, Cavitt and Vaughns voting in favor of the motion, and with Commissioners Clark and Parker absent at its regular meeting held on Thursday, February 12, 2009, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 5th day of March 2009.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

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