

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-61169-2016 requesting certification of a nonconforming use for an eating or drinking establishment with adult entertainment, 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 May 4, 2017, the Prince George’s County Planning Board finds:

FINDINGS

A. **Location and Field Inspection:** The trapezoid shaped property, which consists of part of Parcel A-3, is located on the northwest quadrant of Chillum Road and Queens Chapel Road approximately 750 feet west of Queens Chapel Road. The property, 2430 Chillum Road, is zoned Commercial Shopping Center (C-S-C). The site is developed with a 3,428 square-foot, single-story, masonry commercial building on an 18,750-square-foot parcel. Access to the site is via ingress/egress on Chillum Road that connects to a 28-space asphalt parking lot at the front (south), left (west), and rear (north) of the property.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	C-S-C	C-S-C
Acreage	0.4304	0.4304
Use(s)	Restaurant w/ Adult Entertainment	Restaurant w/ Adult Entertainment
Parcel	(Part of) Parcel A-3	(Part of) Parcel A-3

C. **History:** Parcel A-3 was subdivided by deed in 1955 and purchased in 1956. Per Work ID #1758-89-U, the structure was built as a 1,300-square-foot restaurant with 34 parking spaces in 1958–1959.

Permit 1758-89-U was approved for a restaurant on April 12, 1989. The revision, Permit 1758-89-U01, was approved on July 2, 1990 for a restaurant.

Permit 46518-2006-02, issued effective April 4, 2007, was for a night club/supper club/restaurant with live entertainment, including topless dancers.

Zoning Ordinance Enacted Legislation

County Council Bill CB-49-2005 (enacted on October 11, 2005) prohibited eating or drinking establishments of any type providing live adult entertainment in the C-S-C Zone.

Council Bill CB-46-2010 (enacted on September 7, 2010) and Council Bill CB-56-2011 (enacted on November 15, 2011) clarified the definitions, use and occupancy (U&O) requirements, and enforcement provisions for adult entertainment and eating or drinking establishments in commercial and industrial zones. The use of live adult entertainment is restricted to the Light Industrial (I-1) Zone. Deadlines for applying for special exceptions for existing businesses were established.

D. **Master Plan Recommendation:** The 1994 *Approved Master Plan and Sectional Map Amendment for Planning Area 68* retained the subject property in the C-S-C Zone. The property is also located in the 2006 *Approved Transit District Development Plan and Transit District Overlay Zoning Map Amendment for the West Hyattsville Transit District Overlay Zone* (TDDP/TDOZ), which was approved on May 23, 2006.

E. **Request:** The applicant requests certification of a nonconforming use for an eating and drinking establishment with adult entertainment on a property zoned C-S-C in a Transit District Overlay (T-D-O) Zone. An eating or drinking establishment of any type providing adult entertainment is prohibited in commercial zones. The nonconforming status began on October 11, 2005 when Council Bill CB-49-2005, prohibiting the use in commercial zones, went into effect and was further impacted by the enactment of CB-46-2010 and CB-56-2011. Thus, a request for certification of a nonconforming use approval is required.

F. **Surrounding Uses:**

North— Property owned by M-NCPPC zoned Reserved Open Space (R-O-S).

South— Across Chillum Road, the Chillum Road Shopping Center zoned Mixed Use Transportation-Oriented (M-X-T).

East— Developed property zoned C-S-C with auto repair and retail uses.

West— Developed property zoned C-S-C with medical and transportation uses.

G. **Definition of a Nonconforming Use:**

(A) **The “Use” of any “Building,” “Structure,” or land which is not in conformance with a requirement of the Zone in which it is located (as it specifically applies to the “Use”), provided that:**

(i) **The requirement was adopted after the “Use” was lawfully established; or**

(ii) **The “Use” was established after the requirement was adopted and the District Council has validated a building, use and occupancy, or sign permit issued for it in error.**

- (B) The term shall include any “Building,” “Structure,” or land used in connection with a “Nonconforming Use,” regardless of whether the “Building,” “Structure,” or land conforms to the physical requirements of the Zone in which it is located.

Certification Requirements: Certification of a nonconforming use requires that certain findings be made. Section 27-244 of the Prince George’s County Zoning Ordinance sets forth the following specific requirements for certifying a nonconforming use:

(a) **In general.**

- (1) 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) **Application for use and occupancy permit.**

- (1) The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.
- (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 one hundred eighty (180) consecutive calendar days between the time the use became nonconforming and the date when the application is submitted, or that conditions on nonoperation for more than one hundred eighty (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—In accordance with Section 27-244(f) of the Zoning Ordinance, the Planning Board must first determine whether, in fact, the use was legally established prior to October 11, 2005, when the use as an eating or drinking establishment of any type providing live adult entertainment in the C-S-C Zone was prohibited, and upon the enactment of Council Bills CB-46-2010 and CB-56-2011, which further prohibited adult entertainment in the C-S-C Zone. Second, there must have been no break in operation for more than 180 days since the use became nonconforming.

The applicant submitted the following documentary evidence in support of the application to demonstrate the legal establishment of the business and continuous operation:

1. Letter from Board of License Commissioners dated December 12, 2006, indicating that the licensed establishment had had adult entertainment prior to May of 2006.
2. Special Entertainment Permit Application dated December 11, 2006.
3. Comments from M-NCPPC regarding permit review dated November 30, 2006.
4. DPIE Zoning Violation Notice dated January 21, 2015.
5. Invoices from Washington City Paper dated January 19, 2007, February 23, 2007, March 23, 2007, April 27, 2007, May 25, 2007, July 27, 2007, August 17, 2007, October 1, 2008, November 12, 2008, December 3, 2008, October 14, 2009, December 2, 2009, and September 12, 2012 with actual ad run on that same date.
6. Letter from McNamee Hosea Attorneys & Advisors to Franklin D. Jackson, Chairman, Board of License Commissioners, dated August 8, 2012, requesting a meeting to discuss House Bill 1050.
7. Letter from Board of License Commissioners to McNamee Hosea dated September 4, 2012 indicating agreement to operate in compliance with HB 1050.

8. Cease and Desist Letter from DPIE dated November 16, 2016.
9. E-mail chain between the County Attorney's Office and Board of License Commissioners dated April 3-8, 2008, regarding adult entertainment and liquor licenses.
10. Adult Entertainment Chart from the Board of License Commissioners (date unknown).
11. Prince George's County Board of License Commissioners Inspector Reports dated January 27, 2012, February 29, 2012, March 31, 2012, April 30, 2012, May 25, 2012, June 9, 2012, July 27, 2012, August 10, 2012, September 21, 2012, October 5, 2012, November 16, 2012, February 12, 2013, April 2, 2013, May 13, 2013, September 22, 2013, September 27, 2013, November 13, 2013, January 30, 2014, May 31, 2014, September 2, 2014, November 21, 2014, April 11, 2015, June 19, 2015, November 18, 2015, February 13, 2016, May 28, 2016, and August 28, 2016.
12. Prince George's County Liquor Board various Data Collection Forms dated December 14, 2012, April 12, 2013, August 23, 2013, September 6, 2013, September 28, 2013, January 10, 2014, January 18, 2014, March 1, 2014, July 13, 2014, July 20, 2014, October 25, 2014, November 1, 2014, November 14, 2014, December 28, 2014, February 20, 2015, March 7, 2015, March 28, 2015, May 2, 2015, May 31, 2015, September 11, 2015, October 4, 2015, October 24, 2015, December 11, 2015, February 26, 2016, and March 18, 2016.
13. E-mail to the Board of License Commissioners from Avondale/North Woodridge Citizens' Association dated August 13, 2012, requesting enforcement of building and site improvements.
14. Security Plan for Mustangs (2011).
15. Special Entertainment Permit Renewal Application for 2012.
16. Special Entertainment Permit Renewal Application for 2013.
17. Special Entertainment Permit Renewal Application for 2014.
18. Special Entertainment Permit Renewal Application for 2015.
19. Special Entertainment Permit Renewal Application for 2016.
20. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2007.

21. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2008.
22. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2009.
23. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2010.
24. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2011.
25. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2012.
26. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2013.
27. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2014.
28. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2015.
29. State of Maryland Application for Renewal of Retail Alcoholic Beverage License for 2016.
30. Department of Health and Mental Hygiene Permit for Food Service Facility for 1997, 1998, 1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.
31. State of Maryland Trader's and Restaurant License for 2003 through 2016.
32. State of Maryland Liquor License for 1991, 1992, 1993, 2000, 2001, 2002, 2003, 2004, 2005, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2016-2017.
33. State of Maryland Special Entertainment Permit for 2012, 2012-2013, 2013-2014, 2014-2015, and 2015-2016.
34. State of Maryland Certificate of Good Standing dated January 6, 2017.
35. Affidavits of vendors, dancers and employees.

36. A site plan prepared by RDA Engineering showing:
 - a. The exact nature, size, and location of the building, structure, and use;
 - b. A legal description of the property;
 - c. The precise location and limits of the use on the property and within any building it occupies.

The applicant has, therefore, submitted documentary evidence demonstrating the commencement and continuous operation of the subject use of “eating or drinking establishment with adult entertainment” from October 11, 2005 to the present.

DISCUSSION

The adult entertainment use was allowed through 2005 when legislation was enacted prohibiting the use in commercial and mixed-use zones, and further defined with specific use venues via legislation enacted in 2010 and 2011. The applicant’s Exhibit 9, E-mail communication between the Prince George’s County Attorney’s Office and the Board of License Commissioners dated April 3-8, 2008, establishes that Mustangs Restaurant has operated with a liquor license since March 20, 1975, with adult entertainment since March 1983, and changed ownership in 2002. The records of The Maryland-National Capital Park and Planning Commission, Permit Section, indicate that Mustangs Restaurant was granted Permit 1758-89U, effective on April 12, 1989, for a restaurant use.

Council Bill CB-49-2005, enacted by the County Council on October 11, 2005, prohibits eating or drinking establishments of any type providing live adult entertainment in all commercial zones, while providing an exception for those in the Miscellaneous Commercial (C-M) Zone meeting specific criteria. Thus, the subject property became nonconforming on October 11, 2005 when the adult entertainment use was prohibited. The applicant applied for and was granted a Use and Occupancy Permit, 46518-2006-02, issued effective on April 4, 2007, for a night club/supper club/restaurant with live entertainment, including topless dancers, based upon the use existing under the prior TDDP use tables and documentation of continuous operation provided.

The nonconforming status of the subject use was further impacted with the enactment of CB-46-2010 (September 7, 2010) and CB-56-2011 (November 15, 2011), which defines adult entertainment and clarifies the definition of live adult entertainment, the U&O requirements, and enforcement provisions for adult entertainment and eating or drinking establishments in both commercial and light industrial zones. Deadlines for applying for special exceptions for existing businesses were established. However, Footnote 58 explicitly states, “Any existing establishment in the C-S-C Zone or C-M Zone with a valid use and occupancy permit for an *auditorium, private club or lodge* that included activity that meets the definition of ‘adult entertainment’ may continue upon approval of a Special Exception. Applications for adult entertainment must be filed and accepted by June 1, 2012. The hours of operation shall be limited to 5:00 P.M. to 3:00 A.M. (CB-56-2011).” A night club/supper club/restaurant

with adult entertainment is not identified as a venue requiring a special exception. Therefore, pursuant to both State of Maryland and County law, the subject property is exempt from the filing of a special exception by June 1, 2012 as a requirement. Given that the subject property has a valid "Use and Occupancy Permit, No. 46518-2006-02, issued effective April 4, 2007, for a night club/supper club/restaurant with live entertainment including topless dancers based upon the use existing under the prior TDDP use tables and documentation of continuous operation," which is not a noted use/venue in Footnote 58, the Mustangs Restaurant meets the legal requirements for certification as a nonconforming use. It should also be noted that the property conforms to the Prince George's County regulations regarding adult entertainment locations.

CONCLUSION

The applicant requests certification of a nonconforming use for an eating or drinking establishment with adult entertainment on a property zoned C-S-C in a T-D-O Zone. An eating or drinking establishment of any type providing adult entertainment is prohibited outside of the I-1 Zone. The nonconforming status began on October 11, 2005 when County Council Bill CB-49-2005, prohibiting the use in commercial zones, went into effect and was further impacted with the enactment of both CB-46-2010 (September 7, 2010) and CB-56-2011 (November 15, 2011). The applicant has demonstrated that the use of an eating or drinking establishment of any type providing live adult entertainment was legally established prior to October 11, 2005 and that said use has operated as such without interruption.

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 Doerner, seconded by Commissioner Bailey, with Commissioners Doerner, Bailey, Geraldo, and Hewlett voting in favor of the motion, and with Commissioner Washington temporarily absent at its regular meeting held on Thursday, May 4, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 25th day of May 2017.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

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