



PGCPB No. 11-102

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File No. CNU-9537-2011-03

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-9537-2011-03, SMD Properties, LLC, requesting non-conforming use certification for used car sales with display area 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 October 27, 2011, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 7350 Martin Luther King Jr. Highway, is located in the northeast quadrant of Forest Road, Martin Luther King Jr. Highway (MD 704), to the west and Flagstaff Street to the south. The subject property consists of a single parcel, Parcel One, and is improved with a 1,200-square-foot single-story trailer and requisite parking. The entire property is enclosed with a six-foot black wrought-iron fence. Access to the development is provided via ingress/egress on Flagstaff Street.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18/R-55	unchanged
Acreage	57,616	unchanged
Use	Used Car Sales	unchanged

C. **History:** This application was originally reviewed as an administrative certification for a non-conforming use. There was a request for a hearing by area residents. The applicant, AIC Properties, LLC, applied for a Use and Occupancy Permit (9537-2011-U/01) which was flagged because the property was rezoned from C-M to R-18 and R-55. The subject property was constructed in 2002 as a used car dealership with a display area. The subject property was purchased in 2004 by AIC Properties, LLC from Mega Auto, Inc. The property was used as a used car dealership prior to the purchase by AIC. AIC Properties leased the land to DN Motors, Inc. which operated a car dealership until the lease was assumed by John Lillis as VMD Auto Inc. SMD Properties purchased the property from AIC Properties on March 9, 2011. On June 1, 2010, The 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* adopted by the District Council, changed the zoning of this property from the C-M to the R-18 and R-55 zones, thus effectively making the existing use non-conforming.

D. **Request:** The applicant requests certification of an existing used car sales and display area. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became non-conforming. The non-conforming status began June 1, 2010, when the 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* (SMA) was adopted by the District Council. The property was rezoned from the C-M to the R-18 and R-55

zones by the 2010 *Subregion 4 Master Plan and Sectional Map Amendment*. The residential zones prohibit used car sales as a land use.

E. **Surrounding Uses:**

North—Undeveloped residential property zoned R-55 owned by The Maryland-National Capital Park and Planning Commission (M-NCPPC).

South—Residential property zoned R-18 via the 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* formerly zoned C-M (and existing auto repair shop

East—Martin Luther King Jr. Highway (MD 704) undeveloped residential zoned R-O-S property across the right of way

West—Undeveloped residential property zoned R-55.

F. **Certification Requirements:** Certification of a non-conforming 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 non-conforming.

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) **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 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—According to the applicant's documentation, the subject property has been continuously used as a used car sales lot since SMD Properties purchased the land in 2011. When the applicant applied for a use and occupancy permit, The Maryland-National Capital Park and Planning Commission (M-NCPPC) Prince George's County Planning Information Services staff informed the applicant that the zoning had changed on the property and the use was no longer permitted. Therefore, 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 non-conforming and that it has been in continuous operation since that time.

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

- 1. Use and Occupancy Permits (Exhibit 1):
 - a. 354-2002-CGU (Commercial/Addition/Grading/Use)
 - b. 7354-2004-U
 - c. 2485-2005-U
 - d. 6787-2009-U
- 2. Current MVA Dealer License X8000005005623 – expires 8/31/2011 (Exhibit 2).

3. Bills of Sales 07/03/2010 through 05/03/2011 (Exhibit 3).
4. Invoices from WSSC for water and sewer service dated 03/18/09 through 01/15/10 and 10/06/10 through 01/14/11 (Exhibit 4).
5. Insurance Statement dated March 15, 2011 for 11/15/10 through 11/15/11 (Exhibit 5).
6. HUD 1 New Property Owner dated 03/09/11 (Exhibit 6).
7. Owner Statement of Justification.
8. SMD Properties, LLC Minutes of Membership Meeting, dated August 1, 2011.
9. Notarized renewal option to lease property via e-mail from Adel Tajdar to John Willis dated June 17, 2010.
10. A site plan of the subject property per zoning ordinance. The site plan shows building locations, setbacks, parking and pedestrian connections.

DISCUSSION

Section 27-461 Part 6 B(1)(b)(1) provides that vehicle sales lots are permitted in the C-M zone. The applicant, in the statement of justification, states that the subject site has been used as a used car dealership prior to and since the property was purchased by SMD Properties in 2011. The above evidence which consists of previously issued Use and Occupancy Permits, the current MVA Dealer License, Bills of Sales, utility bills, Insurance Statements, a HUD 1 Property Owner form, and other such documents that support the existence of a fully functioning business, supports the applicant's claim that 7350 Martin Luther King Jr., Highway has been in continuous operation as a vehicle sales lot since the applicant purchased parcel 1 in March 2011. The site was used in compliance with the pre-June 1, 2010 Zoning Ordinance requirements. The non-conforming use began on June 1 2010, when the *Subregion 4 Sector Plan and Sectional Map Amendment* was adopted by the District Council and the property was rezoned from the C-M to the R-18 and R-55 Zones. The use of parcel 1, 7350 Martin Luther King Jr. Highway, as a vehicle sales lot was an allowable use by right prior to the adoption of the *Subregion 4 Sector Plan and Sectional Map Amendment* by the District Council on June 1, 2010.

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, subject to the following conditions:


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.

* * * * *

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 Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Squire and Hewlett voting in favor of the motion, and with Commissioner Cavitt absent at its regular meeting held on Thursday, October 27, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 17th day of November 2011.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 11/1/11