



PGCPB No. 13-87

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File No. CNU-28728-12

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-28728-12, Rendevous requesting certification of a nonconforming use for an auditorium/banquet hall 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 11, 2013, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 10207 Southard Drive, is located on the on the northwest side of Southard Drive at its intersection with Bacon Drive, approximately 160 feet southwest of Baltimore Avenue (US 1). The square-shaped property consists of a single parcel, Parcel S-S, and is improved with a 29,640 single-story building and requisite parking. The banquet hall encompasses 19,118 square feet with the remaining 10,522 square feet used as a warehouse. Access to the development is provided via ingress/egress on Southard Drive and Bacon Drive.

B. **Development Data Summary:**

	EXISTING	DISAPPROVED
Zone	I-2	Unchanged
Acreage	1.2122	Unchanged
Use(s)	Warehouse and Banquet Hall	Unchanged
Parcel(s)	1	Unchanged

C. **History:** The subject property has a history of use as a banquet hall/auditorium use. A prior certificate of occupancy, Permit 16020-2009-CU, was issued on June 26, 2009 for an auditorium with 124 seats. The approval included meetings, engagement/birthday/anniversary/graduation/corporate parties, baby and bridal showers, and family reunions. The approval did not include public dances, dance hall, pay at the door events, adult-oriented uses or performances, and recreational establishment of a commercial nature. The adoption of Prince George's County Council Bills CB-46-2010 and CB-56-2011 defines auditoriums in the Heavy Industrial (I-2) Zone. Council Bill CB-56-2011 placed the uses in the most appropriate section of the Table of Uses for industrial zones. The adopted definition of an auditorium (21.1) is defined as a room or building used for the gathering of people seated as an audience; open to the general public, with or without an admission charge, and used primarily for public speaking, theatrical production; excluding any form of patron dancing or adult entertainment (CB-46-2010). The definition of the use closest to the requested use is a catering establishment (42.1) defined as an establishment that specializes in the preparation of food or beverages for social occasions; such as weddings, banquets, parties, or other gatherings; with or without banquet facilities for these private prearranged occasions that are not open to impromptu attendance by the general public; excluding

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adult entertainment (CB-46-2010). The subject property does have documentation of these uses. Thus, the use became nonconforming on September 7, 2010; the property was in use as an auditorium when the nonconforming status began on September 7, 2010.

A building permit was approved on February 3, 2012 for the subject property, but never issued. The Prince George's County Department of Environmental Resources (DER) issued two temporary use and occupancy (U&O) for permit 16020-2009-04, the first on March 2, 2012 for 90 days and the second on June 20, 2012 for 60 days, each for the purposes of addressing the corrective orders, which included the installation of mezzanine stairs. The second U & O expired on August 19, 2012. The business was padlocked in September 2012 due to Code violations.

D. **Request:** The applicant requests certification of a warehouse and auditorium complex. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began September 7, 2010 when CB-46-2010 was adopted by the District Council prohibiting auditoriums in the I-2 Zone.

E. **Surrounding Uses:**

North— Property zoned Light Industrial (I-1), automotive parts and repair.

South— Property zoned I-2, warehouse use.

East— Automotive gas station zoned Commercial Shopping Center (C-S-C) and retail sales properties zoned I-2.

West— Warehouse property zoned I-2.

F. **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) **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).**

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

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1. Pending Permit Job Card for Permit 28728-2012-U, marked as Exhibit "A"
2. Temporary Use and Occupancy Permit 16020-2009-04, issued March 2, 2012
Temporary Use and Occupancy Permit 16020-2009-04, issued June 20, 2012
All marked as Exhibit "B"
3. Correction Orders, marked as Exhibit "C":
 - June 19, 2012
 - August 19, 2012
 - September 4, 2012
4. Work Permits, marked as Exhibit "D":
 - Issued November 16, 2009
 - Issued November 24, 2009
 - Issued February 11, 2011
5. Affidavit of Jane Nnamani along with Invoices, marked as Exhibit "E":
 - 2009, 2010, 2011, 2012
6. Rental Contracts and Agreement, marked as Exhibit "F":
 - 2009, 2010, 2011, and 2012
7. Tax Returns, marked as Exhibit "G":
 - 2009
 - 2010
 - 2011
 - County Real Property Tax Bill FY2013
 - WSSC Water Bill
8. A site plan prepared by Joyce 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;
 - (d) A copy of a valid U&O permit issued for the use prior to the date upon which it became a nonconforming use, if the applicant possesses one.

The applicant has submitted documentary evidence demonstrating the continuous existence of the nonconforming use. The operation of the subject property as an auditorium continued until September 2012 when the property was closed by the Prince George's County Police Department,

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and DER inspectors issued violation notices for the purposes of correcting code violations, thus causing a 180-day break in continuous use.

DISCUSSION

Documentary evidence submitted per Section 27-244(b)(2)(A) of the Zoning Ordinance documents the existence of a fully functioning business, and supports the applicant's claim that 10207 Southard Drive has been in continuous operation as an auditorium since September 7, 2010 when the use became nonconforming. Permit 16020-2009-CU was issued on June 26, 2009 for an auditorium with 124 seats. The approval included meetings, engagement/birthday/anniversary/graduation/corporate parties, baby and bridal showers, and family reunions. The applicant provided evidence in the form of signed event contracts demonstrating that the subject property was used for these purposes.

The 180-day break in use is due to the closing of the property by the county for multiple violations, this despite DER inspectors' efforts to provide the property owners with multiple temporary U&O permits, based upon financial hardship, to address the corrective orders while continuing to do business. Per Correction Order notes dated August 17, 2012, the applicant was notified on August 11, 2012 that the business cannot continue to operate after August 19, 2012 when the temporary U&Os would expire. However, after the last temporary U&O permit expired on August 19, 2012, the property owners continued to operate their business. The Correction Order dated September 4, 2012 indicates that the applicant was advised to apply for a new permit for Rendezvous, fines were issued for violations, and the building ordered padlocked by the Police Department with DER issuing violation notices.

The use as an auditorium/banquet hall has ceased to operate for more than 180 consecutive calendar days because the business was padlocked. However, this circumstance of nonoperation was not beyond the applicant/owner's control because the county did issue multiple temporary U&O permits based upon financial hardship, thus allowing the applicant/owner to operate to raise the funds necessary to correct the Code violations. While the owners did solicit bids for the work to be completed, there is no evidence that the Code violations were satisfied or that any corrective work was done at all. As such, the conditions of nonoperation for 180 consecutive calendar days were not beyond the applicant/owner's control.

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CONCLUSION

The applicant/owner is requesting a new U&O permit for an auditorium/catering establishment as a nonconforming use per the definition of an auditorium in Section 27-473(b) 6 of the Zoning Ordinance prior to September 7, 2010 when the definition of an auditorium was clarified by the adoption of CB-46-2010 and subsequently CB-56-2011. Council Bill CB-46-2010 provided the current definition of an auditorium, which no longer permits recreational establishments of a commercial nature in the I-2 Zone. While the applicant has demonstrated, via the submission of supporting documents that include rental event contracts, that the use of the subject property as a banquet hall predates the adoption of both CB-46-2010 and CB-56-2011, the conditions of nonoperation per Section 27-244(b)(2)(B) of the Zoning Ordinance for 180 consecutive days were within the applicant/owner's control.

The applicant/owner was aware of the violation issues with the subject property and did not obtain a permit for operating the auditorium/banquet hall use within a timely manner for Permit 16020-2009-CU. DER inspectors worked with the property owner to ameliorate the Code violations. DER issued two temporary U&O permits, March 2, 2012 and June 20, 2012, each for 90 days (180 days in total) to allow for the corrections to be made. The owner was also notified in writing that any operation after August 19, 2012 would be prohibited.

Based on the evidence submitted by the applicant, the Planning Board concludes that the subject property was used and is permitted for use as an auditorium and catering establishment (banquet hall) in accordance with the requirements of the Zoning Ordinance prior to September 7, 2010. However, there is also evidence to suggest the lapse of operation was within the applicant/property owner's control since they were working with DER to correct the outstanding violations, and two temporary U&O permits were issued to provide an additional 150 consecutive calendar days to correct Code violations. Therefore, Certified Nonconforming Use CNU-28728-2012 is DISAPPROVED as a certified nonconforming use.

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 DISAPPROVED 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 Washington, seconded by Commissioner Shoaff, with Commissioners Washington, Shoaff, Geraldo and Hewlett voting in favor of the motion, with Commissioner Bailey abstaining at its regular meeting held on Thursday, July 11, 2013, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 12th day of September 2013.

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 7/18/13