

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 15-03

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File No. CNU-33471-11

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-33471-11, CNC Concrete, requesting certification of a nonconforming use for a concrete batching/mixing plant located in the I-2 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 January 8, 2015, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located on the south side of Sycamore Road between Maryland Avenue and East Maple Avenue. The subject property consists of approximately 43,450 square feet of land and is known as Lots 30-44, Block N, Bel Mar Subdivision, 11600 East Maple Avenue, Beltsville, MD. It is improved with a one-story office building, a single-story shop/storage building, a two-story batch/mixing building, and concrete pads.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	I-2	Unchanged
Acreage	43,450 sq. ft.	Unchanged
Gross Floor Area	1,392 sq. ft.	Unchanged
Use(s)	Concrete Batching Plant	Unchanged

C. **History:** The existing buildings on Lots 30 and 31 were constructed prior to 1970.

Permit 686298-U was issued on December 4, 1970 to Joseph Nazario to operate a contractor's office and storage yard for Lots 33-37.

Lots 30 through 41, Block N, were zoned Heavy Industrial (I-2) prior to 1975, per zoning map amendments. Lots 42-44, which comprise the remainder of the subject property, were placed in the I-2 Zone on August 5, 1975 through the adoption and approval of the South Laurel, Montpelier, and Vicinity Sectional Map Amendment (SMA).

A concrete batching/mixing plant has been operating on-site since sometime in the 1970s. The most recent Use and Occupancy Permit (U&O), 52909-83-CGU, was issued on September 4, 1984 for a concrete batching plant to Joseph Nazario, owner.

The current concrete batching/mixing plant became nonconforming on November 27, 1984 when Prince George's County Council Bill CB-120-1984 was adopted. Council Bill CB-120-1984 reformatted the Prince George's County Zoning Ordinance to specifically list the concrete batching/mixing plant use as requiring a special exception in the I-2 Zone. Prior to

November 27, 1984, a concrete batching/mixing plant was a permitted use in the I-2 Zone, pursuant to a legal memorandum dated November 24, 1981 from Thurman Rhodes, Associate General Counsel (M-NCPPC). On July 25, 1986, the County Council adopted CB-45-1986 which amended and modified the special exception requirements for concrete batching/mixing plants.

Permit 375-99-CG for a proposed treatment facility was placed on hold by staff. The Transportation Planning Section commented on the required I-2 Zone setback and the required 35-foot from centerline street line requirement of Sycamore Road. Comments were generated by staff at this time that a concrete batching plant required a special exception in the I-2 Zone. The applicant was given the option of certifying the use as nonconforming and then applying for a special exception for the alteration. Neither process was pursued at that time.

- D. **Master Plan Recommendation:** The vision for this area in the *Plan Prince George's 2035 Approved General Plan* is as an employment area.
- E. **Request:** The applicant requests certification of an existing concrete batching plant in the I-2 Zone. The use became nonconforming on November 27, 1984 when CB-120-1984 was adopted to reformat the Zoning Ordinance to specifically list the use of concrete batching and to require a special exception in the I-2 Zone. Prior to this date, concrete batching was deemed a permitted use in the I-2 Zone per a legal memo dated November 24, 1981 from Thurman Rhodes, Associate General Counsel (M-NCCPC). Then CB-45-1986 was adopted on July 25, 1986 to amend the special exception requirements for separating and modifying the provisions for concrete batching plants. The entire property was placed in the I-2 Zone on August 5, 1975 per the South Laurel, Montpelier, and Vicinity SMA. Prior to this date, all of the lots except Lots 42-44 were previously zoned I-2 per prior zoning map amendments.
- F. **Surrounding Uses:** The surrounding area is developed with a mix of older heavy industrial and light industrial uses, large unscreened outdoor storage areas, vehicle storage lots, and contractor's storage uses. There are no sidewalks and little on-site green space or landscaping in the area. The site is surrounded by the following uses:
- North— Sycamore Road, beyond which is a portable toilet and septic pumping business in the Light Industrial (I-1) Zone.
 - East— East Maple Avenue, beyond which is a utility contractor in the I-2 Zone.
 - South— A welding, crane, and rigging business in the I-2 Zone.
 - West— Maryland Avenue and the Baltimore and Ohio Railroad tracks in the I-2 Zone.
- 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 the use 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).**

(b) Application for use and occupancy permit.

- (1) The applicant shall file 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 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 of 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, 11600 East Maple Avenue has been in operation as a concrete batching plant since the 1970s. Per a memorandum from the Permit Review Section, the entire property was placed in the I-2 Zone on August 5, 1975 by the South Laurel, Montpelier, and Vicinity SMA. Prior to this date, all of the lots except Lots 42-44 were previously zoned I-2 per prior zoning map amendments. The concrete batching plant became nonconforming on November 27, 1984 when CB-120-1984 was adopted to reformat the Zoning Ordinance to specifically list the use of concrete batching and to require a special exception in the I-2 Zone. Prior to this date, concrete batching was deemed a permitted use in the I-2 Zone per a M-NCPPC legal memorandum dated November 24, 1981 from Thurman Rhodes, prior Associate General Counsel. Council Bill CB-45-1986 was adopted on July 25, 1986 amending the special exception requirements for separating and modifying the provisions for concrete batching plants.

When the applicant applied for a U&O permit in 2011, the Planning Information Services staff could not verify that 11600 East Maple Avenue (CNC Concrete) operated in accordance with requirements of the Zoning Ordinance because original U&O permit records were not available. Therefore, in accordance with Section 27-244(f), 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:

1. Memorandum dated November 24, 1981 from Thurman Rhodes, Associate General Counsel (M-NCPPC), to Richard Castaldi, Permit Review Supervisor, stating that the concrete batching plant is a permitted use in the I-2 Zone.
2. Certificate of Occupancy dated September 4, 1984.
3. U.S. Corporate Income Tax returns and year-end statements dated 1984-2013.
4. Aerial photos of the property for 1977, 1984, 1986, 1993, and 2011.
5. Affidavit of Continuous Use, dated September 22, 2014, signed by Joseph Nazario.
6. Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) Permit 686298-U dated December 4, 1970 for Lots 30-37 to operate a contractor office and storage yard.
7. Prince George's County applications for a zoning map amendment for the subject property dated July 23, 1968, January 1, 1969, and January 28, 1970.

8. M-NCPPC building permit application check sheet dated January 26, 1999.
9. Photos of Nazario Concrete:
 - a. Truck entrance from Sycamore Road.
 - b. Covered treatment facility view from East Maple Avenue.
 - c. West side of mix plant from the Maryland Avenue entrance.
 - d. Concrete truck being loaded—view from Sycamore Road.
 - e. View south on Maryland Avenue.
 - f. View north of the sight-tight fence on Maryland Avenue.
 - g. View south of the East Maple Avenue parking and entrance.
 - h. View west at the intersection of East Maple Avenue and Sycamore Road.
 - i. View of the concrete batch plant from the Maryland Avenue entrance.
10. Miscellaneous supporting documents demonstrating continuous operation:
 - Prince George's County, Department of Environmental Standards, Division of Construction standards, construction permit dated October 26, 1998.
 - Correspondence from the Maryland Department of Transportation dated February 2006 and April 5, 2011 for an expansion of services.
 - Correspondence from the Maryland Department of the Environment.
 - Potomac Electric and Power Company (PEPCO) utility bills dated January 14, 2008 and July 10, 2008.
 - Nazario Construction employee time cards, uniform policy statements, correspondence, and other employee documents.
 - Sales slips, invoices, and daily mix reports.
 - U.S. Department of Commerce 1997 Economic Census for Concrete Products.
 - Maryland Department of Labor, Licensing, and Regulation (DLLR) Survey of Occupational Injuries and Illnesses, 2008.

DISCUSSION

The applicant has provided a Certificate of Occupancy, 52909-1983-00, dated September 4, 1984 issued by the Prince George's County Department of Environmental Resources, Permits and Review Division, for 11530 East Maple Avenue, Beltsville, MD 20705 for Lots 30-44 for a concrete batch plant. This evidence, combined with the aerial photos of the property from 1997, 1984, 1986, and 1993, demonstrate the existence of a fully functioning business, which supports the applicant's claim that

11530 East Maple Avenue has been in continuous operation as a concrete batching plant since the 1970s and continued to operate as such after the use became nonconforming in 1984. The aerial photos specifically provide visual evidence of the property's use and the structures on-site from 1977 through 2011. The other evidence, which consists of income tax returns, employee documents, correspondence with state agencies, and project invoices, further documents the existence of a commercial use of the site at the subject property and supports the applicant's claim of continuous use.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject property, CNC Concrete, is currently used and is permitted for a concrete batching plant use in accordance with the requirements of the Zoning Ordinance in effect prior to 1984. There is also no evidence to suggest a lapse of continuous use 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 Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, Shoaff and Hewlett voting in favor of the motion at its regular meeting held on Thursday, January 8, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 29th day of January 2015.

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 1/13/15