



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 15-125

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File No. CNU-43620-2015

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Firewood Unlimited requesting Certification of a nonconforming use for year-round sales and storage of firewood business with a single-family house in a single-family residential lot 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 November 19, 2015, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, also known as Firewood Unlimited, is located on the east side of Piscataway Road and northeast of Delancey Street. The site is comprised of 15.83 acres of land and is improved with a two-story single-family house with year-round firewood sales and storage business, an unmarked gravel parking lot, and four dilapidated sheds in the Residential-Estate (R-E) Zone. Most of the site is undeveloped and has a naturally wooded area all around the lot. A major part of land along the northern and eastern property is filled with firewood that is fairly high. Some of the firewood pile appears to be older than other areas. Along the northern side of the property is some newly stacked firewood. At the time of the site visit, Keith DeMarrs (owner's son), informed staff that the firewood pile along the northern property line was established approximately 20 years ago. The site also has some dismantled vehicles and some commercial vehicles such as, wood-hauling trucks, pick-up trucks, bob cats, etc., parked on the site. The site is accessed through a long gravel driveway which also leads to the gravel parking lot in front of the existing house.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-E	Unchanged
Acreage	15.83	Unchanged
Use(s)	Single-family residential with a firewood storage and sales business	Single-family residential with a year-round firewood storage and sales business
Parcel(s)	1	Unchanged

C. **History:** The following information was extracted from documentation submitted by the applicant and from the permit history of the site, as it relates to the use.

1918—A single-family structure was originally constructed on the subject property and has been used as a single-family residence for many years.

April 28, 1959—The property was annexed into the Washington Regional District.

July 26, 1960—The original zoning map for Planning Area 81 was approved and the property was zoned Rural Residential (R-R).

December 4, 1979—The Accokeek-Tippett-Piscataway Sectional Map Amendment rezoned the property to the Residential-Agricultural (R-A) Zone.

May 16, 1983—By deed, Mr. Keith Luke DeMarr (owner) acquired the property from his late mother.

September 1993—The Approved Master Plan and Sectional Map Amendment for Subregion V, Planning Areas 81A, 81B, 83, 84A and 85B placed the subject property in the R-E Zone.

July 13, 2004—The Prince George's County Department of Environmental Resource (DER), Community Standards Division, issued a citation (Z-10-9-05) for failure to comply with a number of provisions of the Zoning Ordinance, including the use of a building, structure, and land without a use and occupancy (U&O) permit (See Staff Exhibit A). Following the citation, DER inspected the site on three separate occasions and determined that the applicant repeatedly failed to comply with its original zoning violation notice.

June 27, 2005—The applicant submitted a permit application to use the subject property for firewood sales as a permanent use (Permit 22829-2005-U). Upon review of the application by The Maryland-National Capital Park and Planning Commission (M-NCPPC), Development Review Division, Permit Review Section, provided written comments to the applicant noting that the woodpiles of firewood encroached onto the adjacent property to the east, Parcel 2. The Permit Section further noted that, if Parcel 2 is part of the original storage area, then it must be included in the certification as an expansion that occurred after April 1959, or the expansion must be removed from the site plan in its entirety. In addition, the applicant was asked to provide the dimensions of the existing sheds and the approximate area of the outdoor firewood sales/storage area. The applicant did not pursue the permanent use permit; therefore, this permit application was abandoned.

March 28, 2007—Temporary use Permit 7846-2007-UTZ was issued by DER for seasonal firewood sales and storage on the property. This permit expired in September 28, 2007.

November 5, 2007—The applicant filed for another permit (43036-2007-U) to use the subject property for firewood sales and storage as a permanent use in the R-E Zone. The Permit Review Section issued written comments to the applicant asking for clarification of the limits of the firewood pile prior to April 1959 and whether the firewood sales and storage was an expansion of the original firewood storage area because the plan labeled it "relocation areas of previous woodpile" and only the area used for firewood sales and storage that existed prior to April 28, 1959 may be certified as a nonconforming use. The applicant did not pursue the permanent use permit; therefore, this permit was abandoned.

September 25, 2015—The applicant applied for Use Permit 43620-2015-U for firewood sales and storage as a permanent use on the property. This permit replaces prior permits 43036-2007-U and 22829-2005-U. This permit is currently on hold. Written comments were issued to the applicant.

- D. **Master Plan Recommendation:** The 2013 Approved Subregion 5 Master Plan and Sectional Map Amendment retained the subject property in the R-E Zone.
- E. **Request:** The applicant is requesting certification of a nonconforming use for an existing year-round firewood sales and storage business with an existing single-family house on a single-family residential lot located in the R-E Zone. The family plans to continuously live in the existing house while running the year-round family business on the site.
- F. **Surrounding Uses:** The site is surrounded by the following uses:
- North— A single-family-dwelling in the R-E Zone.
- South— Residential single-family development in the R-E Zone.
- East— Undeveloped land in the Residential Low Development (R-L) Zone.
- West— Piscataway Road right-of-way.
- G. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either pre-date the pertinent zoning regulations, 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 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.**

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

1. **Sworn affidavits, including one from Mr. Keith DeMarr (owner), attesting that the year-round sales and storage of firewood business has been existing in this location before and since he was born in 1952. A few other sworn affidavits, including an affidavit from Mr. Joseph Edelen, Jr., a long-term neighbor living at 10775 Piscataway Drive since 1928, attesting that "firewood has been sold on this property since 1930."**

To their knowledge, the sales and storage of firewood has been a year-round family business on this property and the business has never ceased to operate for any period of time since it's commencing date in 1930.

Analysis—The property is in the R-E Zone. Year-round firewood sales and storage is not a permitted use in this zone. In accordance with Sections 27-260 and 27-261 of the Zoning Ordinance, only temporary use of firewood displays and sales are permitted. On March 28, 2007, a temporary use Permit, 7846-2007-UTZ, was issued by DER in accordance with the applicable section of the Zoning Ordinance. This permit expired on September 28, 2007. Subsequently, on November 5, 2007, the applicant filed for another Use Permit, 43036-2007-U, for certification of a nonconforming use for firewood sales and storage as a permanent use in the R-E Zone and did not pursue this permit; therefore, it was abandoned. No other permits have ever been issued on the site for a temporary or year-round firewood business. On September 25, 2015, as part of the requirement for a nonconforming use application, the applicant applied for another Use Permit (43620-2015-U) for firewood sales and storage. This permit replaces prior Permits 43036-2007-U and 22829-2005-U. Currently, this permit is on hold because a year-round firewood sales storage business is not a permitted use in the zone unless it is determined that the use existed prior to the Zoning Regulation and approved by the Planning Board as a nonconforming use.

The nonconforming status began when the property was annexed into the Washington Regional District on April 28, 1959. In order to certify a nonconforming use, the applicant must provide certain proof of documentation listed under Section 27-244 in Finding G above to decide if the use qualifies as a nonconforming use. The only documentary evidence the applicant provided for review of this application is a number of sworn affidavits, including one from Mr. Keith DeMarr (owner), and his long-term neighbors attesting that the year-round sales and storage of firewood business has existed in this location from 1930, which never ceased to operate for any period of time since it's commencing date. No one stated in their affidavit the exact location of the firewood storage and sales area. Although the provided affidavits are valid documents, which testifies that the business had existed on the site prior to the commencing date of the nonconforming use, it is not sufficient to determine if the business has been operating legally and continuously without any break in use for more than 180 calendar days since it became nonconforming in April 1959. The applicant was unable to provide any required documentation, such as business records, tax records, or public utility installation or payment records showing the commencing date of the business and its legal continuous operation. During the review process, staff asked the applicant a number of times to provide the needed documents, to show the exact location and limits of the firewood sales and storage area on the site plan that existed prior to April 1959 because only that area can be certified as nonconforming use. The applicant was unable to provide the precise location and limits of the uses, as he claims that the wood storage area changes every year.

Based on the information provided by the applicant, on October 12, 2015, staff produced a final report in which it could not find that the application supplied adequate evidence for continuous operation of the firewood business after the commencing date of the nonconforming use. Therefore, staff recommends Disapproval of the application.

However, at the November 19, 2015 Planning Board hearing, additional evidence was presented by the applicant. Exhibit A was introduced into evidence by the Applicant which contained among other items; letters and more affidavits from neighbors and residents who live in the area, include the Applicant's family members. A copy of the site plan prepared by RDA Surveyors of Upper Marlboro, Maryland in 2007, which illustrated areas of the property in which wood had been stacked or stored at that time including two (2) predominant areas in the northeast corner of the subject property; one on the north side of the property (beside the house) and one on the east side of the property (behind the house). Said information also included two (2) letters from companies which supplied trees and limbs to the Applicant for processing into firewood and asserted that there were no receipts or invoices exchanged between them and the property owner because the said wood supplies were provided free of charge. The letters presented were either affidavits or letters in which the writer certified that the information contained herein was based on the writer's personal knowledge and that he/she was competent to testify to the same.

There was a vast number of neighbors that were present at the public hearing presenting testimony. Among the testimonies of the neighbors, the Applicant, Keith DeMarr, testified that he recalls as a child and prior to 1959 that wood was being processed and sold on the property and that his father had indicated to him that he had been chopping, cutting, storing, and selling wood on the property since approximately 1930. Other witnesses and neighbors at the public hearing also testified under oath that they personally observed the property being used for this purpose prior to 1959 and as early as 1952. These and other witnesses testified that from their personal knowledge of their acquaintance with the business, the business of selling wood on the property was continuous and uninterrupted, although at time the property may have been barren of wood due to the fact that the owner had run out of product. The owner and his son, Kenny DeMarr, further testified that the sales of wood were done on a cash basis with an occasional customer paying by check. However, approximately 99 percent of the sales were cash transactions.

The evidence further indicated that certain modifications to the current conduct of the business and could be carried on without disturbance or an adverse effect on the surrounding residential community. The applicant proffered the following modifications:

- a. The current line of evergreens adjacent to the Piscataway Road in front of the house would continue to be maintained by the property owners' and in addition, the number of trees to be planted would be doubled with a second line of trees staggered approximately 6-8 feet behind the current line of trees. The trees would consist of a rapid growth type of evergreen with a starting height of 4-5 feet.
- b. No wood would be piled or stacked in front of the said line of trees and no wood would be piled or stacked in front of the house.
- c. Wood would only be piled or stacked along the northeast corner of the property as shown on Exhibit A-2, which is the RDA site plan of 2007, with the further condition that no wood would be stacked or stored in front of the front building line of the house under any circumstances and further that the stacking or storing of wood on the north side of the

property (beside the house) would not exceed nine (9) feet in height and that the storing and stacking of wood on the east side of the property (behind the house) would not exceed 11 feet in height.

- d. The applicant would consent to these modifications being placed on any occupancy permit issued pursuant to the certification of this nonconforming use by Prince George's County, Maryland.

CONCLUSION

Based on the evidence and testimony provided by sworn witnesses of the community and the owners, the Planning Board concludes that the subject Firewood business was in existence prior to April 28, 1959, and therefore APPROVES CNU-43620-2015.

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.

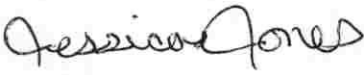
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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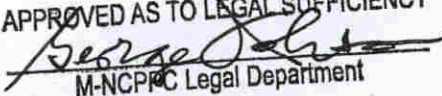
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Shoaff, Geraldo and Hewlett voting in favor of the motion at its regular meeting held on Thursday, November 19, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 10th day of December, 2015.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:TA:ydw

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC Legal Department
Date 12/3/15