

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-2764-12, Atlas Foundations of Washington, LLC, requesting certification of a nonconforming use for a contractor's office with outdoor storage of materials only in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, on April 3, 2014, Certification of Nonconforming Use CNU-2764-12, Atlas Foundations of Washington, LLC, was scheduled for a public hearing before the Prince George's County Planning Board. Prior to the hearing, the applicant's representative provided a memorandum by e-mail to staff proposing to change the subject property's existing use from "contractors office with outdoor storage of materials, **including** outdoor storage of earthmoving or other heavy equipment and machinery" to "a contractor's office with outdoor storage of **materials only**." The memorandum further stated that the uses will be in conformance with the requirement of the Commercial Miscellaneous (C-M) zoning regulations. However, no revised site plan was submitted illustrating the applicant's proffers. For this reason, staff requested that the Planning Board continue the case two weeks to April 17, 2014 to afford time to evaluate a revised site plan that implements the applicant's proffers. This extension was granted by the Planning Board; and

WHEREAS, after consideration of the evidence presented at the public hearing on April 17, 2014, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, also known as Atlas Foundations of Washington LLC., is located on the southwest side of Beech Way and west of Stamp Road, at the intersection of Beech Way and Stamp Road. The site is comprised of 0.284 acre of land and is improved with a two-story office building and two canopies for sheltering building construction materials and equipment. The entire site is paved concrete with two marked parking spaces. Most of the site is being used to store heavy earthmoving construction vehicles, (i.e. drilling machines, tractor trucks, hydraulic excavators, etc.), contractor's equipment, construction supplies, and outdoor storage of machineries, some of which are a prohibited use in the zone. The site is enclosed by a six-foot-tall chain-link fence with a gate from Stamp Road and a gate from Beech Way. Access to the development is provided via a 20-foot-wide driveway entrance from Stamp Road and a gate located along the southern side of Beech Way.

During the field inspection, it was noted that the two existing canopies (one of which is located along the southern property line and the other along the western property line) and an extension to the existing building to the west were added to the site after the 1982 building permit was issued. In addition, there is no existing landscaping on the site. Permits for the new improvements should be acquired and all of the landscaping, per previously approved plans, should be restored on the site.

B. Development Data Summary:

	EXISTING	APPROVED
Zone	C-S-C	Unchanged
Acreage	0.284	Unchanged
Use(s)	Contractor's office with outdoor storage of materials, earthmoving heavy equipment, and machinery	Unchanged
Parcel(s)	1	Unchanged

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

In 1959—The subject property was originally constructed and used as a single-family house for many years in Rural Residential (R-R) Zone.

July 1974—This property was rezoned from the R-R Zone to the General Commercial, Existing (C-G) Zone through Zoning Map Amendment A-9065.

March 23, 1982—Building Permit 4071-1982-CGU was issued for the addition of new construction and to use the property as Business Branch office supply and equipment retail.

August 2002— The applicant, Edward E. Perez-Reyes (owner), purchased the property and began using the property for a contractor's office with outdoor storage of vehicles and equipment without a valid use and occupancy permit.

September 30, 2008—The property was rezoned from the Miscellaneous Commercial (C-M) Zone to the Commercial Shopping Center (C-S-C) Zone by the 2008 *Approved Branch Avenue Corridor Sector Plan and Endorsed Sectional Map Amendment* (Branch Avenue Corridor Sector Plan and SMA). The SMA prohibited the outdoor storage of materials including storage of machinery, earthmoving, and heavy equipment in the C-S-C Zone.

March 9, 2010—Use and Occupancy Permit 4164-2010-U was approved by The Maryland-National Capital Park and Planning Commission (M-NCPPC), Prince George's County Planning Department, Development Review Division, Permit Review Section, for "Contractors Services with outdoor storage of contractor vehicles only. No outdoor storage of earthmoving or other heavy equipment or machinery per 4071-82-CGU." It appears that a certificate of occupancy was never issued.

February 10, 2012—The applicant submitted a permit application to use the subject property for a contractor's office with outdoor storage of vehicles and equipment in the C-S-C Zone (Permit 2764-2012-U). Upon review of the application by M-NCPPC, Permit Review Section, it

was noted that prior to the rezoning from the C-M Zone to the C-S-C Zone, the outdoor storage of materials was permitted on the subject property if located only in a side or rear yard; enclosed by a slightly opaque wall or fence at least six feet high; with no storing of material higher than the fence; but excluding the use or outdoor storage of earthmoving or other heavy equipment, or outdoor storage of machinery per Section 27-461(b)(3) of the Zoning Ordinance. It was further discussed that, although the subject site has been previously used for contractors' services with outdoor storage in the C-M Zone, it did not have a valid use and occupancy permit for the use. Therefore, the use must be brought before the Planning Board to be certified as a nonconforming use.

- D. **Master Plan Recommendation:** The Branch Avenue Corridor Sector Plan and SMA rezoned the subject property from C-M to C-S-C.
- E. **Request:** The applicant is requesting certification of a nonconforming use for an existing contractor's service office with outdoor storage of materials only.
- F. **Surrounding Uses:** The site is surrounded by the following uses:
- North—** Across Beech Way, near the intersection of Beech Way and Stamp Road, is a used car dealer's parking lot in the C-S-C Zone.
- South—** Immediately adjacent to the south are commercial establishments (i.e. hair salon, auto repair, music studio, and office uses) in the Light Industrial (I-1) Zone.
- East—** Across Stamp Road, opposite the subject property, are various commercial retail establishments (i.e. hair salon, restaurant, tire company, etc.) in the I-1 Zone. Immediately north of the retail use is an office building and other commercial development in the C-S-C Zone.
- West—** Immediately contiguous to the subject site is Alfredo's Construction Company in the C-S-C Zone.
- 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 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. A sworn affidavit from Edward E. Prez-Reyes, the owner of the property, attesting that a contractor's office with outdoor storage of vehicles and equipment known as 4600 Beech Way, Temple Hills, Maryland was continuously operating from January 1, 2003 to present. He also stated that the contractor's office with outdoor storage of vehicles and equipment has not ceased operations for more than 180 consecutive calendar days since the use became nonconforming in 2008.
2. Combined utility bills from Washington Suburban Sanitary Commission (WSSC), phone bills, and electric bill payment records from October 2008 to June 2013.
3. Select purchase orders from various companies such as BMG Metals, Inc., TEI Rock Drills, Inc., and Metro Bobcat Sales showing the purchasing record of materials and heavy equipment for the use of the business from July 2008 to May 2013.
4. Copies of commercial liability insurance policy from October 2007 to October 2013.

Analysis—The foregoing documentation clearly indicates that the contractor's office with outdoor storage was established on the property prior to the date on which the use became nonconforming and the use was continuous, without any interruption for more than 180 consecutive calendar days.

The property has drastically changed over the course of the eleven years the applicant has had possession of the property. The unauthorized uses, such as storage of earthmoving machinery and other heavy equipment, were established on the site. These uses were never lawfully established in accordance with the requirements of the Zoning Ordinance. In addition, the site was altered by abolishing landscaping, removing parking spaces, and adding new structures without a valid permit. The applicant's attorney was notified of the illegal uses. The Planning Board offered to support the previously approved permitted use only (Permit 4164-2010-U), provided that the applicant raze all unauthorized building additions and structures, restore all landscaping and the required parking and loading in accordance with the prior approved site plan. On April 7, 2014, a revised site plan was submitted by the applicant. The revised plan not only established the existing use to be a contractor's office with outdoor storage of materials only, but also proposed to restore the site to its previously approved plan by proposing to demolish all of the new construction except a 557-square-foot, two-story building addition and restore its parking, loading, and landscaping in accordance with the requirements of the zoning regulations at the time the use became nonconforming.

CONCLUSION

Based on the revised site plan and evidence provided by the applicant, it is clear that the use was lawfully established in accordance with the requirements of the zoning regulations and it did not cease operation for more than 180 consecutive calendar days. Therefore, the Planning Board changed its recommendation of Certification of Nonconforming Use Application No. CNU-2764-12, Atlas

Foundations of Washington, LLC, reflected in the original technical staff report from **DISAPPROVAL** to **APPROVAL**.

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.

* * * * *

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 Bailey, seconded by Commissioner Geraldo, with Commissioners Bailey, Geraldo and Hewlett voting in favor of the motion, and with Commissioners Shoaff and Washington absent at its regular meeting held on Thursday, April 17, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 8th day of May 2014.

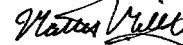
Patricia Colihan Barney
Executive Director



By Jessica Jones
Planning Board Administrator

PCB:JJ:TA:arj

APPROVED AS TO LEGAL SUFFICIENCY.



M-NCPPC Legal Department

Date 4/28/14