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File No. CNU-24399-13

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-24399-13, El Puente De Oro Restaurant, requesting certification of a nonconforming use for an eating and drinking establishment with music and patron dancing past the hours of 12:00 a.m. 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 31, 2014, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, La Union Center, which houses El Puente De Oro Restaurant, 1401 University Boulevard, Units G5 and G6, is located on the south side of University Boulevard (MD 193), approximately 1,050 feet east of the intersection of New Hampshire Avenue, and west of Riggs Road. The asymmetric-shaped property is recorded as Parcel 73 which has a net lot area comprising of approximately 4.824 acres in the Commercial Shopping Center Zone (C-S-C) Zone. The parcel is improved with an 81,000-square-foot two-story building and requisite parking. The El Puente De Oro Restaurant, Units G5 and G6, has a gross floor area of 4,160 square feet. Access to the development is provided via ingress/egress on MD 193.

B. Development Data Summary:

	EXISTING	APPROVED
Zone	C-S-C	Unchanged
Acreage	4.824	Unchanged
Use(s)	Commercial (Restaurant)	Unchanged
Parcel(s)	73	Unchanged

- C. **History:** The El Puente De Oro Restaurant is an established business that has operated at La Union Center, 1401 University Boulevard, Units G5 and G6, for over a decade as a restaurant. La Union Center recently came under new ownership, prompting the need for new use and occupancy (U & O) permits for all of the tenants. The owners of the El Puente De Oro Restaurant, alternately known as both the Asian Group and the Castro Corporation, obtained approval for a Certificate of Occupancy, Permit 33369-2011-U, for a restaurant excluding music and patron dancing, but the permit was never issued and has since expired. Prior Permit 36762-2001-CU was issued on January 7, 2002 to the same owner for a restaurant with music extending beyond 11:00 p.m., with a maximum of 132 seats for Units G5/G6, El Puente De Oro Restaurant. On December 17, 2012, Prince George's County Department of Environmental Resources, Permit Office, approved Permit 38685-2012-U for a restaurant with no entertainment, patron dancing, and no music past 12:00 a.m.

- D. **Request:** The applicant requests certification of a nonconforming use for a restaurant with live entertainment (not adult oriented), music, and dancing beyond 12:00 a.m. Per County Council Bill CB-49-2005, an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m., excluding adult entertainment, requires a special exception in the C-S-C Zone. Prior Permit 36762-2001-CU was issued on January 7, 2002 for a restaurant with music extending beyond 11:00 p.m., with a maximum of 132 seats for El Puente De Oro Restaurant in Units G5 and G6. It should be noted that the applicant erroneously reapplied for a U & O permit that did not allow for live entertainment, dancing, and music past 12:00 a.m. Hence, the request for certification as a nonconforming use. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began October 11, 2005 when Council Bill CB-49-2005 was adopted by the District Council.

E. **Surrounding Uses:**

- North—** University Boulevard (MD 193) and a developed property zoned Multifamily Medium Density Residential (R-18).
- South—** Board of Education property zoned One-Family Detached Residential (R-55).
- East—** Developed property, used as a commercial shopping center, zoned Multifamily High Density Residential (R-10).
- West—** Property zoned Local Commercial, Existing (C-1) and General Commercial, Existing (C-2) in Takoma Park, in Montgomery County.

- 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).**

(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 October 11, 2005, 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. Pending Permit Job Card for 24399-2013-00

2. Permit 36762-2001-CU, to the Asian Group, El Puente De Oro Restaurant, for a restaurant, dated July 29, 2002, no limitations are noted.
3. Certificate of Occupancy to La Union Center for El Puente De Oro Restaurant dated June 11, 2013, with limitations citing no entertainment, patron dancing, and no music past 12:00 a.m.
4. Correspondence dated January 6, 2005 and February 5, 2005 and applications for a Class B (on sale only) Beer, Wine, and Liquor license citing the approval of a 650-square-foot bar to the dining room of the establishment and karaoke entertainment on Friday and Saturdays from 7:00 p.m. to 2:00 a.m. and on Sundays 7:00 p.m. to 11:00 p.m. No adult entertainment was approved.
5. Renewal applications for a Class B (on sale only) Beer, Wine, and Liquor license for the years 2005–2013. Both the 2012 and 2013 applications specifically cite karaoke as entertainment.
6. Affidavit of Fitzgerald Rodriguez citing the provision of part-time security from 2012 to 2013, and the observation of live entertainment, music, and dancing beyond the hours of 12:00 a.m.
7. Affidavit of Yaqui Mitchel citing the provision of part-time security from 2004 to 2013, and the observation of live entertainment, music, and dancing beyond the hours of 12:00 a.m.
8. Affidavit of Joseph Maradiaga citing the provision of DJ services from 2004 to 2013, and the observation of live entertainment, music, and dancing beyond the hours of 12:00 a.m.
9. Affidavit of Carlos Hernesto Rivas citing the provision of Karaoke DJ services from 2004 to 2013, and the observation of live entertainment, music, and dancing beyond the hours of 12:00 a.m.
10. Affidavit of Michael S. Kim, Asset Manager, citing signatory authority for La Union Center.
11. Health Department Food Service Permits for the years 2006–2014 for El Puente De Oro.
12. U.S. Corporation Income Tax Returns for 2005, 2006, 2007, and 2008.
13. Prince George's County Department of Environmental Resources, Licenses and Inspections Group (DPIE), Correction Order dated June 11, 2013, Final Use and Occupancy Inspection citing okay to occupy and use per Permit 38685-2012-U as a restaurant dining establishment.

14. Leasing Plan for La Union Center, El Puente De Oro Restaurant and Crystad Restaurant, Units G5 and G6, showing Permit 38665-2012-U.
15. A site plan prepared by A. Morton Thomas and Associates 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.

The applicant has, therefore, submitted documentary evidence demonstrating the continuous existence of the nonconforming use for an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m.

DISCUSSION

The impetus for the request of nonconforming use for the El Puente De Oro Restaurant is the fact that the business owner applied for the incorrect use and occupancy permit, which was necessary due to the change in ownership of the La Union Center building that houses the restaurant. Documentary evidence submitted per Section 27-244(b)(2)(A) of the Zoning Ordinance documents the existence of a fully functioning business, which supports the applicant's claim that El Puente De Oro has been in continuous operation as an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m. at least three years prior to the use becoming nonconforming on October 11, 2005. The use and occupancy permit applications from 2001 and 2012 contain the same information. Both applications are for a restaurant. The 2001 application does not specifically request approval for music and dancing past 12:00 a.m.; however, Permit 36762-2001-CU was issued on January 7, 2002 for a restaurant with music extending beyond 11:00 p.m. The applicant's liquor license (and subsequent renewals) allows for karaoke entertainment, was approved by the Prince George's County Board of License Commissioners on February 4, 2005. The applicant also provided signed affidavits from two security officers and two disc jockeys that have provided services at the restaurant documenting the use as an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m. There is no evidence that the El Puente De Oro Restaurant ceased operations for more than 180 consecutive calendar days as an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m. since the use became nonconforming on October 11, 2005.

CONCLUSION

The applicant is requesting certification of a nonconforming use for an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m. Council Bill CB-49-2005 requires a special exception in the C-S-C Zone for an eating or drinking establishment of any

type, including music and patron dancing past the hours of 12:00 a.m., excluding adult entertainment. In this instance, a special exception is not necessary because there was a previously issued permit, which allowed the requested use. The applicant has demonstrated, via the submission of supporting documents, that the use of the subject property as an eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m., excluding adult entertainment, predates the adoption of CB-49-2005. 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 eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 a.m., excluding adult entertainment, in accordance with the requirements of the Zoning Ordinance prior to October 11, 2005.

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 and Hewlett voting in favor of the motion, and with Commissioner Geraldo absent at its regular meeting held on Thursday, July 31, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 4th day of September 2014.

APPROVED AS TO LEGAL SUFFICIENCY



M-NCPPC Legal Department

Date

8/14/14

Patricia Colihan Barney
Executive Director

By

Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj