

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-25172-2011, 8300 Sheriff Road Fed Ex Field Temporary Event Parking Lot requesting certification of a nonconforming use for a commercial parking lot for use in conjunction with Fed Ex Field events 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 26, 2012, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The property is located in the northwest quadrant of the intersection of Brightseat Road and Sheriff Road, and is more particularly described as Parcel 51 on Tax Map 60. The site has been graded and gravel driveway aisles were installed so that the property could be used as a temporary parking lot. No existing structures exist on the site.

B. **Development Data Summary:**

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone/Acreage	M-X-T/17.20± O-S/4.92±	M-X-T/17.20± O-S/4.92±
Total Acreage	22.13	22.13
Use(s)	Temporary Commercial Parking Lot	Temporary Commercial Parking Lot
Lot Coverage	Unknown	Unknown
Variance	No	No

- 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.

1. **August 19, 2003**—Applicant purchases the property.
2. **July 19, 2004**—Rough Grading Permit No. 1661-2004-01 issued by the Prince George's County Department of Environmental Resources (DER).
3. **August 11, 2005**—Use and Occupancy Permit No. 27736-2005-U placed on hold by The Maryland-National Capital Park and Planning Commission (M-NCPPC), Prince George's County Planning Department, Development Review Division, Permit Review Section for a commercial parking lot proposed on the C-M-Zoned portion of the site. Written comments were issued to the applicant that outlined the outstanding zoning issues and the site plan revisions that would be needed in order to bring the site in compliance with the minimum requirements of the Zoning Ordinance and Landscape Manual and to obtain

approval of a permanent use and occupancy permit. The applicant did not pursue the permanent use and occupancy permit and temporary permits were subsequently issued by the Department of Environmental Resources.

4. **Fall of 2005**—Applicant states Temporary Use and Occupancy Permit No. 38505-2005 was issued by the Prince George's County Department of Environmental Resources (DER) for stadium events during the fall of 2005. Copies of this temporary permit were not submitted.
5. **September 29, 2005**—Applicant signs lease agreement with the Board of Education (BOE) to use portions of the Bonnie F. Johns Educational Media Center located at 8437 Landover Road (and abutting the subject property to the north) 10 to 15 times a year for vehicular access.
6. **August 3, 2006**—Temporary Use and Occupancy Permit No. 25195-2006-00 issued by the Prince George's County Department of Environmental Resources (DER) for a parking lot, (valid only for the 2006-2007 Redskin home games, and entrance only from Barlowe Road).
7. **September 29, 2006**—Letter issued from Donna Wilson, Director of the Prince George's County Department of Environmental Resources (DER), to the applicant stating that the existing parking lot does not meet several Prince George's County Code requirements, and that should a permanent use and occupancy permit be desired that the applicant would need to undertake the development process and obtain all required approvals including approval from the M-NCPPC.

The letter further stated that it was DER's understanding that the parking use on the property was an interim one and that the temporary use and occupancy permit provides that the applicant an annual option to pursue the conditional use of the property until they move forward with the permanent utilization.

8. **2008**—No temporary use and occupancy permits were issued for 2008. However, the applicant states that parking lot was used for home Redskin games.
9. **May 19, 2009—Adoption of the 2009 Landover Gateway Sector Plan and Sectional Map Amendment and the rezoning the subject property from the C-M/O-S Zones, to the M-X-T/O-S Zones.**
10. **August 12, 2009**—Temporary Use and Occupancy Permit No. 23836-2009-00 issued by the Prince George's County Department of Environmental Resources (DER) for a temporary parking lot, (Conditions - Valid only for August 22 and 28, September 20, October 4, 18 and 26, November 15, December 6 and 21 Redskins games and any home playoff games that may occur in January 2010, Entrance only from Barlowe Road, No overnight parking permitted).

11. **September 4, 2009**—Temporary Use and Occupancy Permit No. 26838-2009-00 issued by the Prince George's County Department of Environmental Resources (DER) for a temporary parking lot, (Conditions - Valid only for August 22 and 28, September 20, October 4, 18 and 26, November 15, December 6 and 21 Redskins games and any home playoff games that may occur in January 2010, Entrance only from Barlowe Road, No overnight parking permitted). This permit appears to be a duplicate and covers the same time period as the temporary permit previously issued on August 12, 2009.
12. **2009 & 2010**—Applicant states that the property was leased directly to the Redskins Organization during this time period. No documentation was provided. The next temporary permit submitted was not issued until September 1, 2011.
13. **September 1, 2011**—Temporary Use and Occupancy Permit No. 25849-2011-00 issued by the Prince George's County Department of Environmental Resources (DER) for a parking lot, (Conditions – Valid only for September 1, 2011, Entrance only from Barlowe Road, No overnight parking is permitted).
14. **September 1, 2011**—Permanent Use and Occupancy Permit No. 25172-2011-U placed on hold by M-NCPPC. Written comments were issued to the applicant.
15. **September 11, 2011**—Temporary Use and Occupancy Permit No. 25850-2011-00 issued by the Prince George's County Department of Environmental Resources (DER) for a parking lot, (Conditions – Valid only for September 11, 2011, Entrance only from Barlowe Road, No overnight parking is permitted).
16. **September 16, 2011**—Temporary Use and Occupancy Permit No. 27454-2011-00 issued by the Prince George's County Department of Environmental Resources (DER) for a temporary parking lot for Redskins Game, (Conditions – Valid only for September 18, 2011, Entrance only from Barlowe Road, No overnight parking permitted, Must provide handicapped parking).
17. **October 14, 2011**—Temporary Use and Occupancy Permit No. 30410-2011-00 issued by the Prince George's County Department of Environmental Resources (DER) for a temporary parking lot for Redskins Game, (Conditions – Valid only for October 16, 2011, entrance only from Barlowe Road, No overnight parking permitted, Must provide handicapped parking).
18. **November 9, 2011**—Temporary Use and Occupancy Permit No. 32752-2011-00 issued by the Prince George's County Department of Environmental Resources (DER) for a temporary parking lot, (Conditions - Valid only for Redskin games and two College games on November 12, and 20<sup>th</sup>, and December 4, 10, 11 and 24<sup>th</sup>, 2011, Entrance only from Barlowe Road, No overnight parking permitted).

- D. **Master Plan Recommendation:** The temporary event parking lot does not conform to the M-X-T land use recommendations within the 2009 *Approved Landover Gateway Sector Plan and Sectional Map Amendment* which recommends Office, Retail and Residential land uses.

The site is located in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods. A temporary event parking lot is inconsistent with the 2002 General Plan Development Pattern policies for the Developed Tier.

The 2009 *Approved Landover Gateway Sector Plan and Sectional Map Amendment* rezoned the subject property from C-M/O-S to M-X-T/O-S.

In a memorandum dated June 20, 2012, (White to Ferrante), the Community Planning North Division provided the following additional planning comments:

The property was previously zoned C-M and issued temporary use and occupancy permits from the Department of Environmental Resources (DER) for a temporary event parking lot. Parking lots are permitted by right in the C-M Zone. Prior to the rezoning of the property from C-M/O-S to M-X-T/O-S by the 2009 *Approved Landover Gateway Sector Plan and Sectional Map Amendment*, the property was not developed in conformance with the Prince George's County Zoning Ordinance requirements, and therefore, cannot be considered a nonconforming use.

Consequently, the temporary event parking lot does not conform to the M-X-T zoning recommendations. However, In Chapter 7: Implementation, on page 138 Proposed Zoning Change Number LG-4b Discussion states:

**The plan proposes mixed-use development with office/retail and residential uses for the property. However a temporary graveled surface parking lot is currently allowed in anticipation of future mixed-use development as envisioned by the sector plan.**

The discussion in LG-4b was based on the land use of the property prior to the approval of the sector plan.

*The 2009 Approved Landover Gateway Sector Plan and Sectional Map Amendment* points to the use of the property as a parking lot that is permitted as a temporary use. The sector plan essentially recognized the existing land use that was on the ground at the time of the sectional map amendment. However, the Use Tables in the Zoning Ordinance dictate what uses are permitted and a commercial parking lot is not a permitted use in the M-X-T Zone.

- E. **Request:** The applicant requests that the use of a temporary commercial parking lot on the M-X-T zoned portion of the property for use in conjunction with events at Fed Ex Field be certified as a nonconforming use.

The property has direct access to Brightseat Road. However, the prior temporary use and occupancy permits that were issued by the Department of Environmental Resources (DER) restricted all vehicular access to the property from being from Barlowe Road. Direct access to Brightseat Road was denied by DER and the Stadium's Traffic Committee due to concerns with the traffic flow during stadium events which was directed so that five of the six lanes on Brightseat Road operated towards the stadium before events, and away from the stadium after events. Although the property has no direct access to Barlowe Road, the applicant has entered into a License Agreement with the Prince George's County Board of Education (BOE) to access the property through the Bonnie Johns facility which abuts the subject property along the northern boundary of the site.

**F. Surrounding Uses:**

**North**—Auto Sales and Service, & Board of Education Administrative Building - M-X-T Zone

**South**—Sheriff Road Right-of-Way

**East**—Brightseat Road Right-of-Way

**West**—Residential Duplexes, Section Two, Palmer Park Subdivision—R-35 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 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:

**Section 27-244(a)(1)** states the following:

**In general, 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).**

**Section 27-244(b)(1)** states the following:

**The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**

**Section 27-244(b)(2)** states the following:

**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.**

On July 29, 2005, prior to the rezoning of the property to the M-X-T Zone, the applicant, Brightseat Development Associates, LLC, applied for Use and Occupancy Permit No. 27736-2005-U for the use of a commercial parking lot within the C-M-Zoned portion of the site. On August 11, 2005, the permit was placed on hold by M-NCPPC and written comments were issued to the applicant outlining the needed plan revisions. The permit was not pursued by the applicant and temporary use and occupancy permits were subsequently issued by the Department of Environmental Resources (DER). Temporary permits are not referred to M-NCPPC for review for compliance with zoning requirements unless the property is located within a Transit District Overlay Zone (T-DOZ). Therefore

this request is being made to certify a commercial parking lot as a nonconforming use based on temporary permits that were reviewed and issued solely by DER.

Section 27-260(a) of the Zoning Ordinance states that the Department of Environmental Resources may issue temporary permits (and if necessary, building permits) for the specific temporary structures and uses, and in accordance with the requirements of Section 27-261. Section 27-260(c) states that no temporary permit shall be required if the use is allowed by other provisions of this Subtitle as a permanent use, and further, Section 27-260(d) states that these temporary uses are only allowed as set forth in the Tables of Uses (for the various zones).

The use of a commercial parking lot is not one of the specific temporary uses permitted by Section 27-261. Prior to May 19, 2009, and the approval of the 2009 *Approved Landover Gateway Sector Plan and Sectional Map Amendment*, the portion of the property that contained the commercial parking lot had been situated in the C-M Zone. A commercial parking lot is a permitted use in the C-M Zone. Prior to the rezoning of the property temporary permits were being issued by DER when the use was otherwise allowed by other provisions of the Zoning Ordinance as a permanent use. After the portion of the property containing the commercial parking lot was rezoned to the M-X-T Zone, temporary permits were still being issued by DER, even though a commercial parking lot is not a permitted use in the M-X-T Zone per the Tables of Uses provided in Section 27-547(b)(8) of the Zoning Ordinance. As a result, all of the temporary permits that were issued by DER, both before and after the rezoning of this property, appear to have been issued in error.

Section 27-244(a) states that 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).

**Section 27-107.01(166)(A) defines a Nonconforming Use as;**

- (A) The “Use” of any “Building,” “Structure,” or land which is not in conformance with a requirement of the Zone in which it is located (as it specifically applies to the “Use”), provided that:**
  - (i) The requirement was adopted after the “Use” was lawfully established; or**
  - (ii) The “Use” was established after the requirement was adopted and the District Council has validated a building, use and occupancy, or sign permit issued for it in error.**

Any temporary use and occupancy permit that is issued by DER is only valid for the specific time period that is reflected on the permit. A temporary use and occupancy permit does not give a property owner the right to continue operations beyond the time period that is reflected on the issued permit. On September 29, 2006, Donna Wilson, the Director of DER sent a letter to the applicants stating that it was DER's understanding that the parking use on the property was an interim one, and that the temporary use and occupancy permit provides an annual option for the applicant to pursue the conditional use of the property until they move forward with the permanent utilization. The letter further states that the parking facility does not meet several Prince George's County Code requirements, and that should the applicant wish to pursue a permanent use and occupancy permit that they would be required to undertake the development process and obtain all required approvals including approval from M-NCPPC. At the time the letter was sent to the applicant, the portion of the property containing the temporary commercial parking lot was located in the C-M Zone, and was therefore a permitted use. On August 11, 2005, more than a year before DER sent the letter to the applicant, M-NCPPC issued written comments to the applicant for Use and Occupancy Permit No. 27736-2005-U. Those comments clearly outlined the required site plan revisions that would be needed in order to obtain approval of a permanent use and occupancy permit for a commercial parking lot in the C-M Zone. Therefore, when the use was one that was permitted by right in the C-M Zone, the applicant chose not to pursue the development process and chose not to pursue the use and occupancy permit comments from M-NCPPC that would have legally established the use on the property as a permanent one. The written comments for Use and Occupancy Permit No. 27736-2005-U were given to the applicant four years prior to the rezoning of the property to the M-X-T/O-S zones.

## CONCLUSION

In this case, the operation of the use on the property was restricted to the specific dates that were listed on the temporary use and occupancy permits. Once the time period listed on a temporary permit lapses, the applicant's legal right to continue operations on the property also lapses. Therefore, a temporary use could not be considered nonconforming.

Further, it would appear that the temporary permits that were issued by DER may have been in error because the use of a commercial parking lot is not one of the specific temporary uses permitted by Section 27-261 of the Zoning Ordinance. Regardless of the legal status of the temporary permits that were issued for the site, what is clear is that the use never went through the development process to ensure the commercial parking lot was constructed in accordance with the minimum requirements of the Zoning Ordinance, ADA standards (American with Disabilities Act), and the 2010 *Prince George's County Landscape Manual*, or met the required zoning criteria needed in order to obtain a permanent use and occupancy permit.



This is not a case of a use predating zoning requirements. The commercial parking lot use did not begin on the property until 2004, and prior to the rezoning of the property to the M-X-T Zone, the use was never in compliance with the requirements of the C-M Zone. Rather than complying with the minimum zoning requirements and pursuing a permanent use and occupancy permit for the commercial parking lot when the use was permitted in the underlying zone, the applicant continued to request temporary permits that were only valid for specific events. Because the site was never properly developed in accordance with the requirements of the Zoning Ordinance when it was in the proper zoning category, the applicable County Code provision(s) confers no relevant rights on an owner who wishes to continue operations. In addition, the Board notes that a "Temporary Commercial Parking Lot" is not provided as a specific use in the C-M Zone Use Table. If the applicant had submitted a site plan that met the requirements of the Zoning Ordinance, he would have been granted a use and occupancy permit for a "Commercial Parking Lot" which is a permitted use in the C-M Zone. Whether or not the parking lot is used on a temporary or full-time basis is a business decision left for the applicant.

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.

\* \* \* \* \*

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, July 26, 2012, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 6th day of September 2012.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator

PCB:JJ:JJ:arj