THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
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PGCPB No. 2020-52

File No. CNU-26029-2019

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-26029-2019, E&K International Food Market, requesting Certification of a nonconforming use for a food or beverage store 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 April 2, 2020, the Prince George's County Planning Board finds:

1. **Location and Field Inspection:** The subject property, addressed as 9315 and 9317 Livingston Road, Fort Washington, Maryland, is zoned Commercial Miscellaneous (C-M) and is located on the west side of Livingston Road, approximately 0.3 miles north of Oxon Hill Road. The site is known as Parcel 107, containing 0.25 acre, and is recorded among the Prince George's County Land Records in Liber 41373 at folio 500.

   According to the applicant's site plan, the site is developed with a single building, including a 1,443-square-foot gross floor area unit in the southern part of the building (9317 Livingston Road), and a 1,346-square-foot gross floor area unit in the northern part of the building (9315 Livingston Road). It is noted that the site plan reflects a second story is located above the northern unit. According to the Maryland State Department of Assessments and Taxation (SDAT), the total floor area of the building is 3,920 square feet.

   The site is served by a variable-width asphalt driveway with access points south and north of the building; this driveway provides one-way access and circulation to, and from Livingston Road, an 80-foot-wide collector roadway located to the east of the property. The site plan indicates that the building on-site is surrounded by asphalt paving, which is used for parking. However, the building was constructed prior to any parking requirements and, therefore, there are currently no parking requirements for the site.

   Planning staff conducted a site visit on March 2, 2020, during which they observed that the first floor of the building was vacant. Signs in the windows indicated that the E&K International Food Market would soon be moving into this space. Staff also observed that the second floor of the building appeared to be occupied by a separate use, known as Fusion Community Outreach Ministries.

2. **Surrounding Uses:** The site is bounded to the north and south by commercial uses in the C-M Zone; to the west is an automotive center in the Light Industrial and Open Space Zones; and to the east is Livingston Road, with commercial uses in the Commercial Shopping Center and Commercial Office Zones beyond.

3. **History:** The subject property was placed in the C-M Zone by the 1984 Subregion VII Sector Plan and Sectional Map Amendment. Prior to this rezoning, the property was zoned General Commercial (C-2). According to SDAT, the original building was constructed in 1929.

   The following information was derived from the applicant's statement of justification (SOJ), received January 21, 2020, and incorporated by reference herein; documentation submitted by the applicant; and from the permit history of the site, as it relates to the use.

   a. **1929:** Structure is built.

   b. **October 18, 1968:** Permit 6820-16-U is issued for a beauty salon at 9315 Livingston Road.

   c. **September 22, 1980:** Permit 4577-80-U is issued for a general store at 9317 Livingston Road. This permitted the establishment of C&C Groceries, then known as C&C Trading.

   d. **March 17, 1982:** Permit 598-82-U is issued for an office at 9315 Livingston Road.

   e. **1984:** The site is rezoned to the C-M Zone via the 1984 Subregion VII Sector Plan and Sectional Map Amendment. A food or beverage store in the C-M Zone is permitted by special exception.

   f. **April 23, 1990:** A Certificate of Occupancy associated with Permit 988-90-CU is issued for electrical repair services at 9315 Livingston Road.

   g. **August 21, 1992:** A Certificate of Occupancy associated with Permit 3489-92-U is issued for tapes, video, movie rental, bakeries, wholesale fish and seafood at 9315 Livingston Road.

   h. **September 10, 2018:** The property is bought by the current property owner, SARS LLC.

   i. **September 2018 – March 2019:** The grocery store previously operating on the subject property goes out of business. The new owner of the property, SARS LLC, sells items left behind by previous owner.

   j. **March 12, 2019:** SARS LLC enters into a lease agreement with new tenant, Ebrima T. Jallow (the applicant in the subject case). Applicant/tenant meets with their architect to discuss plans for the location, and with the health department supervisor to discuss the requirements for a carry-out.

   k. **April 2019 – June 2019:** Applicant submits architectural plans to the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), which are returned due to missing information. Applicant resubmits to DPIE.

l. **June 11, 2019:** Permit 26029-2019-CU is filed for interior work and use of the building at 9315 and 9317 Livingston Road, as a food or beverage store.

m. **July 2019 – September 2019:** Health department, fire department, and structural and electrical engineers approve architectural plans. DPIE informs applicant they can pick up their submitted permit (26029-2019-CU) and licenses before determining that there is no information from the Prince George's County Planning Department in the permit application package.

n. **November 2019 – February 2020:** In meetings between the applicant and the Planning Department's Permit Review Section, staff determined that the applicant's permit would not be able to be reviewed administratively for certification of nonconforming use (CNU) because the use as a grocery store had ceased for more than 180 days. The applicant proceeded to file for review of the CNU application by the Prince George's County Planning Board.

4. **Request:** The applicant requested a CNU for a food or beverage store. Their project is for an international grocery store, which is considered a food or beverage store under the table of uses in the Prince George's County Zoning Ordinance. The C-M Zone allows the use of a food or beverage store by special exception; however, this property is nonconforming because it has never had a special exception approved for use as a food or beverage store. The property became nonconforming when it was rezoned to the C-M Zone in 1984; previously, the property was in the C-2 Zone, which permitted a grocery store by right. The previous grocery store, known as C&C Groceries, ceased operation sometime between September 2018 and March 2019, shortly after the property came under new ownership. The current owner leased the first-floor units on the property to the applicant in this case, who filed a permit application to certify the nonconforming use of a food or beverage store at 9315 and 9317 Livingston Road.

5. **Site Data Summary:**

Zone:	C-M
Acreage:	0.25 acre
Use:	Food or beverage store (first floor)
Gross Floor Area:	2,789 sq. ft (total)
9315 Livingston Road	1,346 sq. ft
9317 Livingston Road	1,443 sq. ft

6. **Certification Requirements:** Section 27-107.01(a)(166) of the Zoning Ordinance 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.

(B) The term shall include any "Building," "Structure," or land used in connection with a "Nonconforming Use," regardless of whether the "Building," "Structure," or land conforms to the physical requirements of the Zone in which it is located.

The applicant's SOJ provides that a grocery store was lawfully established prior to the property's placement in the C-M Zone and, therefore, requests certification as a nonconforming use.

Certification of a nonconforming use requires that certain findings be made. Section 27-244 of the Zoning Ordinance sets forth the following specific requirements for certifying a nonconforming use:

Section 27-244

(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 is not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division). Any person making use of or relying upon the certification that is violating or has violated any conditions thereof, or that the use for which the certification was granted is being, or has been exercised contrary to the terms or conditions of such approval shall be grounds for revocation proceedings in accordance with this Code.

The applicant, through submittal of this application, attempted to provide documentary evidence in order to demonstrate that a grocery store was lawfully established, and requested the Planning Board's approval to be certified as a nonconforming use, which is discussed further.

(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.

The applicant filed Permit 26029-2019-CU on June 11, 2019, 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;

Along with the evidence provided in the History finding of this resolution, the application, and accompanying site plan, the applicant submitted the following documentary evidence in support of the application:

a. A collection of records for permits and certificates of occupancy, issued between 1968 and 1992 for both units, as previously described in the History finding of this report.

b. An affidavit from Eugene Northrop, the selling agent for C&C Groceries, stating that per his knowledge the previous property owner Mr. Boon (Boonlert Rungfarsangaroon) ran C&C Groceries at 9317 Livingston Road between 1982 and his selling the property to Sunil Sharma.

c. Additional letters and emails of correspondence from:

i. Eastland Food Corp (2/2/2019), regarding 9317 Livingston Road operating as a grocery store since the 1980's;

ii. Anna Rungfarsangaroon (10/20/2019), daughter of the prior owner, indicating that she had no available records;

iii. Joel Charles (11/18/2019), a shopper at C&C Grocery since 2007;

iv. Bernard Nelson (11/18/2019), indicating the use of a grocery store at 9315 and 9317 Livingston Road since the 1970's,

v. the Prince George's County Health Department (11/18/2019), recalling inspection of 9317 Livingston Road in the 1980's and that they had written the facility out of business in December 2018; and

vi. the Washington Suburban Sanitary Commission (WSSC) (12/2/2019), confirming account activation in 1965 and continuous service since at least March 4, 1999, noting that their archival limitations prevent additional information.

d. A property tax inquiry for SARS LLC, covering July 2015 to June 2020.

e. A list from the Prince George's County Permits and Licenses Application Tracking System showing all permits on record between 1985 and 2019.

f. A collection of state business licenses and sales and use tax licenses for C&C Groceries, addressed as 9317 Livingston Road, from various years, including 2018, 2002, 2001, 1992, and 1982.

g. A collection of utility bills charged to Sunil Sharma from the Potomac Electric Power Company, Washington Gas, and WSSC between October 2018 and June 2019

h. A collection of online reviews for C&C Groceries from November 2009 to February 2016.

For the unit known as 9317 Livingston Road, the previous permit approvals, selling agent's affidavit, and other correspondence establish that use of the property has consistently existed as a nonconforming grocery store from 1980 until at least December 2018, when the current owner bought the property For the unit known as 9315 Livingston Road, the permit records do not conclusively demonstrate that a grocery store was established in the unit prior to the time the use would have become nonconforming in 1984. However, the applicant's testimony at the April 2 Planning Board hearing, as well as some of the correspondence on the record, provide evidence that the use existed prior to 1984 in this unit as well.

(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 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.

The applicant submitted evidence demonstrating the continuous operation of the grocery store until at least September 2018, when the current owner bought the property. The applicant has also provided evidence indicating when the current owner advertised the property for sale/lease and the duration that the property was on the market, as set forth below:

a. A list of items for sale on Craigslist, showing the property was advertised in September 2018 and again in November 2018.

b. A commercial lease agreement between Sunil Sharma, acting as SARS LLC, and Ebrima T. Jallow, (TA-E&K Int food mkt & carry out) made on March 12, 2019, for a seven-year term ending in March 2026.

Ample evidence is provided demonstrating that the site ceased operation for a period exceeding 180 days. The previous grocery store has been non-operational since at least March 2019, when the applicant signed a lease, and possibly as far back as September 2018, when the current owner bought the property.

However, the property owner promptly proceeded to advertise the property for lease upon his purchase of the site in September 2018. Once leased in March 2019, the applicant (lessee) has actively pursued the opening of their business, working with DPIE between April and September 2019 to obtain approval of permits, and later with the Planning Department, between October 2019 and the present, to obtain certification of their nonconforming 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;

The applicant submitted a deed (Liber 41373 at folio 500) stating the legal description of the property, as well as a site plan with metes and bounds matching the deed description. The submitted site plan shows the exact nature, size, and location of the building. The site plan does not show the exact extent of the use within the building, but staff has confirmed (see emails from Shariq to Hughes dated November 21, 2019

and November 22, 2019, and incorporated by reference herein) that the new grocery store is to occupy the whole first floor of the building, within units known as 9315 and 9317 Livingston Road.

(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 a use and occupancy permit issued for C&C Groceries, unit 9317 Livingston Road, on September 22, 1980, prior to the property's placement in the C-M Zone and the start of its nonconforming status. Permits issued for 9315 Livingston Road indicate various uses which did not include any grocery or retail sales, however, based on testimony of the applicant and submitted affidavits, this unit was used as a grocery store regardless of the permits issued.

(f) Planning Board review.

(1) Required hearing.

(A) If a copy of a valid use and occupancy permit is not submitted with the application, if the documentary evidence submitted is not satisfactory to the Planning Board's authorized representative to prove the commencing date or continuity of the use, or if a public hearing has been requested by any party of interest challenging the commencing date and/or continuity of the use, the Planning Board shall conduct a public hearing on the application for the purpose of determining whether the use should be certified as nonconforming.

The applicant has not submitted documentary evidence demonstrating the continuity of the use from September 2018, when the current owner bought the property, to the present. Therefore, the applicant has requested a hearing before the Planning Board by filing this application.

The required findings of the Planning Board are further described in Section 27-244(f)(4)(A) as follows:

(4) Planning Board Action

(A) The Planning Board may decide to either grant or deny certification of the use as nonconforming. If it decides to certify that a nonconforming use actually exists and has continuously operated and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting,

Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.

The applicant submitted a request to DPIE through the Maryland Public Information Act, to obtain a letter verifying there are no outstanding code violations on the property. DPIE provided a response form (Hill to E&K International Food Market & Carryout LLC) dated February 20, 2020, incorporated by reference herein, which confirmed there were no open code violations as of February 18, 2020.

DISCUSSION

In accordance with Section 27-244(a)(1) of the Prince George's County Zoning Ordinance, in order to certify the use as nonconforming, the use must have been legally established. The evidence put forth and verified through permit history reflects that a grocery store was permitted and established at 9317 Livingston Road prior to becoming nonconforming in 1984. Although a grocery store has not operated on the property for more than 180 consecutive days, based on the evidence put forth, it does appear that the conditions of nonoperation were beyond the owner and applicant's control. Both parties have been attempting to utilize the space and gain approval of the necessary building and use and occupancy permits since purchasing and leasing the property in September 2018 and March 2019 respectively, and within the 180-day period.

While there is not permit evidence to suggest that a food or beverage (grocery) store was established at 9315 Livingston Road prior to 1984, the applicant's testimony, as well as some of the correspondence on the record, suggests that this half of the grocery store was also legally established. The Planning Board noted that the permit documents on record may not have been able to list every use approved with a particular permit and that evidence provided demonstrated that this unit was in fact being operated as a food or beverage store in conjunction with 9317 Livingston Road.

CONCLUSION

Based on the requirements of Section 27-244 of the Prince George's County Zoning Ordinance for certification of a nonconforming use, sufficient evidence to suggest and support that the use of a food or beverage store was legally established for the property at 9315 and 9317 Livingston Road, has been provided. The applicant has also provided evidence indicating active pursuit by the owner and themselves in continuing the nonconforming use of a food or beverage store for this site and that the nonoperation was beyond their control.

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 APPROVES 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 Geraldo, seconded by Commissioner Doerner, with Commissioners Geraldo, Doerner, Bailey, Washington and Hewlett voting in favor of the motion at its regular meeting held on Thursday, April 2, 2020, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 23rd day of April, 2020

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:EDC:nz

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC Legal Department
Date: April 7, 2020