



# THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 11-88

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File No. CNU-33279-10

## RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-33279-10, Alfredo Construction requesting a certification of a nonconforming use for an existing contractor's office with outdoor storage and parking 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 September 15, 2011, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located on the south side of Beech Way, approximately 99 feet west of its intersection with Stamp Road where it intersects with Beech Road just south of Saint Barnabas Road (MD 414). The subject property consists of two parcels, Parcel 217 (4602 Beech Way) and Parcel 218 (4604 Beech Way). Parcel 217 is improved with an existing structure. Parcel 218 is improved with a shed and trailer for storage located at the rear of the property.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	C-S-C	Unchanged
Acreage	0.504	Unchanged
Use(s)	Contractor's office and storage yard	Unchanged
Parcels	2	Unchanged

C. **Master Plan Recommendation:** The 2002 *Prince George's County Approved General Plan* shows the property in the Developed Tier. Policy goals for Developed Tier communities include medium-density, mixed-use redevelopment and infill improving the appearance of area corridors through new design standards and development. The subject property is located within the 2008 *Approved Branch Avenue Corridor Sector Plan and Sectional Map Amendment*, which rezoned the portion of the Saint Barnabas Road (MD 414) corridor that lies in the study area. Notable changes include the rezoning of several C-M-zoned (Miscellaneous Commercial) properties to the Commercial Shopping Center (C-S-C) Zone. The sector plan also recommended a study of the industrial land uses in this area. The Saint Barnabas-Beech Road Industrial Study and Action Plan (June 2010) focuses on a commercial and industrial district located between Branch Avenue (MD 5), Saint Barnabas Road (MD 414), Temple Hill Road, and the Capital Beltway (I-95/495) near the Branch Avenue Metro Station. This area, which is bisected by Beech Road, houses a range of light industrial and commercial uses including auto sales and storage, auto sales parts, limited warehousing, and personal services. The subject properties, 4602 and 4604 Beech Way are located south of Saint Barnabas Road. Both properties were rezoned from C-M to C-S-C per the recommendation of the 2008 *Approved Branch Avenue Corridor Sector Plan and Sectional Map Amendment*.

- D. **History:** Alfredo and Maria Pereira purchased Parcel 218 (4604 Beech Way) on September 26, 2002 for the purpose of establishing a contractor's office with outdoor storage. At the time of purchase, Parcel 218 was zoned C-M. The property was improved with a brick and block shed located at the rear of the property, which was further improved with a bathroom, office, and utilities. As the trailer was added to provide dry storage, the remainder of the property was used for outdoor storage and parking associated with the business. The adjacent property, Parcel 217 (4602 Beech Way), was purchased by the Pereira's on September 26, 2008 for the purpose of expanding their contractor business. The intent was to use the existing structure (a former residence) for their administrative office and expand the vehicle parking and outdoor storage area. Parcel 217 was also zoned C-M at the time of purchase. On September 30, 2008 the *Approved Branch Avenue Corridor Sector Plan and Sectional Map Amendment* was adopted by the District Council, Amendment 2 of the sectional map amendment (SMA) changed the zoning of these properties from C-M to C-S-C, thus effectively making the existing use nonconforming.
- E. **Request:** The applicant requests certification of an existing contractor's office with outdoor storage and parking for Parcels 217 and 218. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began September 30, 2008, four days after the purchase of Parcel 217 and six years after the purchase of Parcel 218, when the *Branch Avenue Corridor Sector Plan and Sectional Map Amendment* was adopted by the District Council. The property was rezoned from C-M to C-S-C by the approved sector plan and SMA on September 30, 2008. The C-S-C Zone prohibits outdoor storage with contractor's offices. However, the use of Parcel 218 (4604 Beech Way) as a contractor's office with outdoor storage existed prior to the zoning change. The request is for the certification of a nonconforming use to allow Parcel 218 to continue its use as outdoor storage in conjunction with the existing and permitted contractor's office on Parcel 217. Both Parcel 217 and 218 are included on the site plan because both properties are used and occupied as a single-development site and has been since Parcel 217 was purchased in 2008 and must be shown to demonstrate that the subject property conforms with all of the requirements of the Zoning Ordinance.
- F. **Surrounding Uses:** The site is surrounded by property used as contractor's offices and storage yards. North of the subject property is Beech Way and property zoned C-S-C used as a contractor's office and storage yard. Properties adjoining the subject properties to the east and west are both zoned C-S-C and are also used as a contractor's offices and storage yards. Property south of the subject area is zoned Light Industrial (I-1) and is used as a contractor's office and storage yard.
- 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 the use 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.**

**(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 non-operation 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;**
  - (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:** According to the applicant's documentation, both Parcel 217 and 218 were zoned C-M with the permitted uses of a contractor's office and storage yard. When the applicant applied for a use and occupancy permit in 2009 for Parcel 217 (4602 Beech Way), the property owner was informed of the zoning change and the new limitations of uses. In May 2009, a use and occupancy permit was granted for Parcel 217 (4602 Beech Way) for a contractor's office and the parking of vehicles associated with the business, but not for the outdoor storage of materials. The applicant continued to use Parcel 218 to store materials only, however, a notice of violation was issued in February 2010, despite the fact that Parcel 218 had been used as a contractor's office and outdoor storage of materials since 2002. Therefore, 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 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. A copy of the deed for Parcel 217, recorded among the Land Records of Prince George's County at Liber 16344, Folio 346. (Exhibit 1)
2. A copy of the deed for Parcel 218, recorded among the Land Records of Prince George's County at Liber 30040, Folio 356. (Exhibit 2)
3. Page 112 of the *Approved Branch Avenue Corridor Sector Plan and Sectional Map Amendment*, Amendment 2 demonstrating the zoning change from C-M to C-S-C for the subject properties, 4604 Beech Way (Parcel 218) and 4602 Beech Way (Parcel 217). (Exhibit 3)
4. A use and occupancy permit application for Parcel 217, 4602 Beech Way. (Exhibit 4)
5. A use and occupancy permit application for Parcel 218, 4604 Beech Way. (Exhibit 5)
6. A notarized statement from Victor Pereira, the owner's son and employee, stating that Parcel 218 (4604 Beech Way) and Parcel 217 (4606 Beech Way) is used and has been continuously used as a contractor's office and storage yard for Alfredo Construction Company since the properties were purchased. (Exhibit 6)
7. Exhibit 7 consists of several documents that include utility service invoices for electrical, water, and telephone services; security, dumpster, satellite television, and floor refinishing invoices; a construction firm business license, and a real property tax bill were submitted to establish the continuous existence of Alfredo Construction on Parcel 218, 4604 Beech Way, prior to September 30, 2008 to present day:
  - a. Invoices from Potomac Electric Power Company (PEPCO) for electricity service at 4604 Beech Way (Parcel 218) from August 15, 2008 to September 15, 2008,

September 15, 2008 to October 20, 2008, October 20, 2008 to November 15, 2008, November 15, 2008 to December 22, 2008, December 22, 2008 to January 23, 2009, March 24, 2009 to April 20, 2009, and October 19, 2009 to November 17, 2009. (Exhibit 7a)

- b. Invoices from PEPCO for electricity service at 4602 Beech Way (Parcel 217) from September 26, 2008 to October 16, 2008, October 16, 2008 to November 15, 2008, January 23, 2009 to February 18, 2009, October 19, 2009 to November 19, 2009, December 22, 2009 to January 21, 2010, and February 19, 2010 to March 19, 2010. (Exhibit 7b)
- c. Invoices from ADT Security Services for Alfredo Construction at 4604 Beech Way (Parcel 218) from October 1, 2008 through January 2009 and the months of March 2009 and December 2009. (Exhibit 7c)
- d. Invoices from H.L. Murphy Company for dumpsters servicing Alfredo Construction at 4604 Beech Way (Parcel 218) dated September 10, 2008, September 22, 2008, and November 3, 2008. (Exhibit 7d)
- e. Invoices from H.L. Murphy Company for dumpsters servicing Alfredo Construction at 4602 Beech Way (Parcel 217) dated December 28, 2009, and May 27, 2010. (Exhibit 7e)
- f. Invoices from the Washington Suburban Sanitary Commission (WSSC) for water and sewer service to 4604 Beech Way (Parcel 218) from May 30, 2008 to March 6, 2009. (Exhibit 7f)
- g. Invoices from WSSC for water and sewer service to 4602 Beech Way (Parcel 217) for the period covering October 15, 2008 to March 6, 2009 and January 6, 2010 to May 20, 2010. (Exhibit 7g)
- h. Invoices from Verizon for telephone service to 4604 Beech Way (Parcel 218) from October 2008 to March 2010. (Exhibit 7h)
- i. A construction firm business license dated April 17, 2009, issued to Alfredo Construction Co, Inc. located at 4604 Beech Way (Parcel 218). (Exhibit 7i)
- j. An invoice for the refinishing of wood floors at 4602 Beech Way (Parcel 217) dated March 7, 2009. (Exhibit 7j)
- k. Invoices from Direct TV for service to Alfredo Construction Company at 4602 Beech Way (Parcel 217) dated September 14, 2010 and November 14, 2010. (Exhibit 7k)

1. A real property tax bill for July 1, 2010 to June 20, 2011 for 4604 Beech Way (Parcel 217). (Exhibit 7I)
8. A site plan of the subject property per the Zoning Ordinance. The site plan shows building locations, setbacks, parking, and pedestrian connections.

#### DISCUSSION:

In a memorandum dated April 13, 2011, Permit Review staff questioned whether the property qualifies for certification as a nonconforming use because Parcel 218 (4604 Beech Way) did not comply with the C-M Zone requirements of the Zoning Ordinance. Section 27-461 of the Zoning Ordinance provides that the outdoor storage of materials is permitted in conjunction with a contractor's office in the C-M Zone provided the materials are stored in a side or rear yard enclosed by a slightly opaque fence or wall at least six feet high. In addition, no materials may be stored higher than the fence. According to the site plan, the office was located at the rear of the property on Parcel 218 and the outdoor storage was located within the front and side yards of the office, which did not conform to the requirements of the Zoning Ordinance.

The applicant, in the statement of justification, cites that Parcel 218 (4606 Beech Way) is now essentially a side and rear yard to Parcel 217 (4602 Beech Way). The subject properties came into compliance with the C-M requirements of the Zoning Ordinance on September 26, 2008 when the applicant purchased Parcel 217. The relocation of the contractor's office and requisite parking from the rear of the property to the front of the property on the newly acquired Parcel 217 and the use of Parcel 218 as the side and rear storage yard enclosed by a sight-tight fence brought the property into compliance with the C-M Zone requirements prior to the September 30, 2008 action by the District Council. The site plan and conceptual rendering reflects a material storage area with a ten-foot landscape strip set back from Beech Way and a six-foot-tall, sight-tight fence to ensure proper screening of the storage materials. These necessary improvements provide the required setback of 35 feet from the right-of-way of Beech Road. The modifications ensure that the site is in full compliance with the requirements of the Zoning Ordinance, as well as improve the visual streetscape along Beech Way.

The Planning Board found, the above evidence, which consists of property deeds, utility bills, and other such invoices that document the existence of a fully functioning business, supports the applicant's claim that the Alfredo Construction Company has been in continuous operation as a contractor's office and storage yard on both Parcel 217 and 218 since the applicant purchased Parcel 217 in 2008. The subject properties were being used in compliance with C-M zoning requirements. The nonconforming use began on September 30, 2008 when the *Approved Branch Avenue Corridor Sector Plan and Sectional Map Amendment* was adopted by the District Council and the property was rezoned from the C-M Zone to the C-S-C Zone. The C-S-C Zone prohibits outdoor storage with contractor's offices. The use of Parcels 217 and 218 as a contractor's office with outdoor storage was an allowable use by right prior to the adoption of the sector plan and sectional map amendment.

The Saint Barnabas-Beech Road Industrial Study and Action Plan (June 2010) makes recommendations to address aesthetics in the area as well as other issues such as environmental, operational, and land use and zoning concerns. As part of the certification, the applicant has proffered to install all landscaping and screening required by the Zoning Ordinance and the *Prince George's County Landscape Manual* to ensure that the property use meets all of the applicable requirements and enhances the visual streetscape along Beech Way.

#### CONCLUSION:

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concluded that the subject property, Parcel 218 (4604 Beech Way) meets the definition of a side or rear yard per Section 27-461 of the Zoning Ordinance, which allows for the storage of materials in a side or rear yard, and Parcel 217 (4602 Beech Way) meets the definition of a contractor's office. Parcel 218 has been continuously used as a side and rear storage yard since September 26, 2008 and Parcel 217 is currently used and is permitted for use as a contractor's office and the parking of vehicles associated with the business, but not for the outdoor storage of materials, since September 26, 2008. There is also no evidence to suggest a lapse of continuous use of either property as a contractor's office and storage yard use since the Pereira's took possession of Parcel 217 in September 2008. Therefore, the Certified Nonconforming Use Application No. CNU-33279-10 is APPROVED as a certified nonconforming use.

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 Squire, seconded by Commissioner Bailey, with Commissioners Squire, Bailey, Washington, Cavitt and Hewlett voting in favor of the motion at its regular meeting held on Thursday, September 15, 2011, in Upper Marlboro, Maryland.


Adopted by the Prince George's County Planning Board this 6th day of October 2011.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY.

  
M-NCPPC Legal Department

Date 9/21/11