

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-3997-2010, Mr. Automotive requesting continuous use of a certified nonconforming use that exceeded 180-day continuous operations 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 June 24, 2010, the Prince George's County Planning Board finds:

The use in this case is certified as a nonconforming auto parts with installation facility in the Commercial Shopping Center (C-S-C) Zone. The property is located at the southeast quadrant of the intersection of Annapolis Road and the Capital Beltway (I-95/495) in the Lanham Crossing Shopping Center. The use is situated on a pad site within the shopping center. The building has been occupied by several different auto repair uses since it opened in 1967. The use was certified as a nonconforming use in 1985. The record shows that the use has been in continuous operation as an auto parts with installation facility until the previous tenant (Mr. Transmission) went bankrupt in late 2008. The use has gone without a tenant since that time.

The applicant is requesting that the Planning Board grant relief from Section 27-241 of the Zoning Ordinance which, among other things, establishes that discontinuance of the day-to-day operation of a certified nonconforming use for a period of 180 days or longer constitutes abandonment of the use. Section 27-241 also grants the Planning Board authority to grant relief from this requirement if the Board determines (upon written request) that the conditions of non-operation were "beyond the control of the person who was in control of the property during the period of non-operation." The Board's determination must be based on satisfactory evidence presented by the person making the request.

In an affidavit dated April 8, 2010, the applicant submits the following evidence:

3. Hannah Storch is the owner of the property located at 8803 Annapolis Road, Lanham, MD. The property is improved with the Lanham Crossing Shopping Center. Included within the shopping center is a free standing building along the northern property line. The building was constructed in or about 1967 as an automotive parts and installation store. The automotive parts and installation store bears a street address of 8801 Annapolis Road.
4. The building has always been occupied by automotive parts and installation uses. On July 6, 2007, a lease was executed by a tenant known as Mr. Transmission. Mr. Transmission occupied the property pursuant to Use and Occupancy Permit Number 31433-2007. The permit was issued on August 15, 2007.

5. Mr. Transmission declared bankruptcy on October 27, 2008, at which time it ceased operation. It was not until March 18, 2009 that the owner regained possession of the premises.
6. In anticipation that the owner would regain control of the premises, I placed signage on the property advertising that the space was available in December 2008. No tenants responded to the signage despite being a visible beltway location.
7. On June 7, I began advertising in the Washington Post. I continued advertising weekly throughout the remainder of 2009 without success in locating a tenant. I personally fielded, on average, about 30 calls a month. Despite an aggressive marketing effort, we were not able to identify a potential tenant until February 15, 2010.
8. On February 22, 2010, a lease was executed with Mr. James Lee, t/a Mr. Automotive to occupy the premises. Mr. Lee applied for a permit on February 23, 2010. Upon review of the permit by the Maryland-National Capital Park and Planning Commission, Mr. James was informed that the automotive use of the property was non-conforming and that the permit could not be approved because of the 11 month period in which the use did not operate.
9. M. Leo Storch Management Corporation owns or manages several retail shopping centers in Prince George's County. It is intimately familiar with the retail market. I have been the marketing manager and leasing agent for the Lanham Crossing Shopping Center since 1995 and have found the current leasing market the most challenging market we have ever experienced.
10. If the current tenant is not permitted to occupy the property, we will be required to obtain a special exception, which will take months to process and force the tenant to seek a new location. The building was constructed as an automotive repair facility and cannot be reasonably remodeled to accommodate any other type of retail use.

The Planning Board notes that the use has essentially been out of operation for nearly 15 months. The fact that the state and county are undergoing tough economic times is well documented. The applicant has been actively pursuing a new tenant during the period of non-operation. The Planning Board finds that the information submitted by the applicant is sufficient to determine that the conditions of non-operation were beyond the applicant's 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 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 Vaughns, seconded by Commissioner Cavitt, with Commissioners Vaughns, Cavitt and Parker voting in favor of the motion, and with Commissioners Clark and Squire opposing the motion at its regular meeting held on Thursday, June 24, 2010, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 15th day of July 2010.

Patricia Colihan Barney
Executive Director

By Frances J. Guertin
Planning Board Administrator