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NON-CONFORMING USE CERTIFICATION

CNU-5873-2006

Application	General Data
Project Name: JOCK'S LIQUORS, INC. Location: Located on the east side of Eastern Avenue, east of Chapelwood Lane and north of Sheriff Road Applicant/Address: Ben K & Mi S Han 2406 Dale Brook Court Gambrills, MD 21054	Date Accepted: 6/25/2008
	Planning Board Action Limit: N/A
	Plan Acreage: 0.2952
	Zone: C-O
	Dwelling Units: N/A
	Gross Floor Area: 1,027 sq. ft.
	Planning Area: 72
	Tier: Developed
	Council District: 05
	Municipality: N/A
200-Scale Base Map: 202NE05	

Purpose of Application	Notice Dates
Nonconforming use for a liquor store in the C-O Zone	Informational Mailing: 3/10/2008
	Acceptance Mailing: 6/24/2008
	Sign Posting Deadline: 9/09/08

Staff Recommendation		Staff Reviewer: Tom Lockard	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

September 22, 2008

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Zoning Supervisor

FROM: Tom Lockard, Planner Coordinator

SUBJECT: **Certification of Nonconforming Use Application No. 5873-2006**

REQUEST: **Certification of a Liquor Store in the C-O Zone**

RECOMMENDATION: **APPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated at the top of the cover sheet. The Planning Board also encourages all interested persons to request to become a person of record in this application. Requests to become a person of record should be made in writing and addressed to the Development Review Division at the address indicated above. Please call 301-952-3530 for additional information.

FINDINGS:

- A. **Location and Field Inspection:** The subject property, known as 1005 Eastern Avenue, is located on the northeast side of Ventura Avenue between Chapelwood Lane and Sheriff Road. The property is zoned C-O. There is an existing liquor store and associated parking on the property which the applicant seeks to have certified as a nonconforming use.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	C-O	C-O
Use(s)	Liquor Store	Liquor Store
Acreage	0.29	0.29

- C. **History:** The liquor store on this property has operated since 1952. At that time, the site was classified in the C-A (Commercial-Ancillary) Zone which allowed for the use. In 1993, the *Approved Master Plan and Sectional Map Amendment for Landover and Vicinity (Planning Area 72)* reclassified the site to the C-O Zone, which does not allow liquor stores. Thus, the use became nonconforming in 1993 when the site was rezoned through the sectional map amendment (SMA).
- D. **Master Plan Recommendation:** The 1993 approved master plan and sectional map amendment for Landover and vicinity recommends commercial office uses for the subject property. The sectional map amendment reclassified the property to the C-O Zone. The 2002 *Prince George's County Approved General Plan* shows the property 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.
- E. **Request:** The applicant requests certification of a liquor store and parking lot in the C-O Zone. The C-O Zone does not permit liquor stores. The applicant has stated that the property is now and has been consistently used as a liquor store and parking lot.
- F. **Surrounding Uses:** The site is surrounded by strip commercial uses to the north, west and south at the intersection of Eastern Avenue and Sheriff Road, including a carryout restaurant (Uncle Lee's) directly across Eastern Avenue to the west in the District of Columbia. One block behind these commercial uses to the northeast, east and southeast are a mixture of single-family detached and attached residences in the R-55 and R-T Zones.
- 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:

- (a)(1) **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.**

- (b)(1) The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**
- (b)(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 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;**
 - (2) A legal description of the property; and**
 - (3) 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: The applicant has provided a copy of a use and occupancy permit (U&O) issued in 1952 for a liquor store on Lots 4–6 of the site; however, it does not include the area now used for parking (Lots 1–3). Because the entire site is not covered by the existing U&O, the certification cannot be done administratively and must go through this process. The applicant has submitted a deed showing that the previous owners of the liquor store (In Gyu “Robert” Choe and Su Yeol Choe, his wife) bought the area used for parking in 1985. Because this was done prior to the zoning change in 1993, the parking area can be included in this certification request. Therefore, in accordance with Section 27-244(f), 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 a use and occupancy permit (No. 1256) dated December 19, 1952, for retail liquor off-sale on the site. This use was permitted in the C-A Zone at that time.
2. A copy of a deed showing that the parking lot adjacent to the liquor store was purchased in 1985 by the previous owner.

3. Copies of alcoholic beverage licenses from the State of Maryland for off-sale on the subject property covering the years 1990–2008.
4. A printout from the Washington Suburban Sanitary Commission (WSSC) showing billing activity on the site covering the time period from April 1995 to January 2006.
5. Two sworn and notarized affidavits from the present owner (Ben K. Han) and previous owner (Robert Choe) dated March 3, 2006. The affidavits state that the subject property has always been used as a liquor store and parking lot since 1985, when Mr. Choe purchased the property. They also state that the liquor store has not ceased operations for more than 180 consecutive calendar days since the use became nonconforming in 1993.

Section 27.107.01, Definitions, of the Zoning Ordinance defines:

A nonconforming building or structure is not in conformance with a requirement of the zone in which it is located provided that the requirement was adopted after the building was constructed, the building was constructed after the requirement was adopted, and a use and occupancy permit was obtained to validate permits issued in error.

A nonconforming use is defined as a use of any building, structure or land that is not in conformance with a requirement of the zone in which it is located provided that the requirement was adopted after the use was lawfully established, the use was established after the requirement was adopted, and the District Council has validated a use and occupancy permit issued in error.

In this case, the building has been on the property since 1940 and has a permit showing the business was established on the site in 1952. The current zoning for the property has been in existence since 1993. Liquor stores are not currently permitted in the C-O Zone, but were permitted in the C-A Zone, from which this site was reclassified in the 1993 SMA.

The applicant has submitted sworn affidavits, deeds and business records all of which suggest that the property has been continuously used as a liquor store with associated parking. The affidavits indicate 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. The applicant has also submitted a boundary survey showing the property and building location and dimensions.

CONCLUSION:

It is required that the documentary evidence provided by the applicant clearly show two things: legal establishment of the use, and continuity of use. Staff believes that the evidence submitted satisfies this requirement. Therefore, staff recommends that the subject application, CNU-1892-2007, be APPROVED for a liquor store and associated parking on the subject property.