

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**CERTIFICATION OF NONCONFORMING USE
CNU-25543-2013**

DECISION

Application: Certification of a Non-Conforming Use
Applicant: 7901 Parston Drive, LLC (Owner)
Opposition: None
Hearing Dates: March 5, 2014
Hearing Examiner: Maurene Epps McNeil
Recommendation: Approval

NATURE OF PROCEEDINGS

- (1) CNU-25543-2013 is a request for the certification of a Nonconforming Vehicle Storage Yard and Vehicle Towing Station, on approximately 21,934 square feet in the I-1/DDO (Light Industrial/Development District Overlay) Zones, located at 7901 Parston Drive, District Heights, Maryland.
- (2) The Planning Board did not elect to consider this Application and the Technical Staff recommended approval of the request for certification. (Exhibits 2 and 7)
- (3) No one appeared in opposition to the request at the hearing held by this Examiner. At the conclusion of the evidentiary hearing the record was kept open for additional information. The information was submitted on March 24, 2014, and the record was closed at that time. (Exhibits 53(a) – (d))

FINDINGS OF FACT

Subject Property

- (1) The subject property is Lot 6, Block A of the Forestville Commercial Center. It is located on the southeast side of Parston Drive, approximately 36 feet southeast of Ritchie-Forestville Road. (Exhibit 47, p. 1) The entire site is enclosed by a six-foot-tall chain link fence with screening slats. (Exhibit 53(d); T. 28-31) The storage yard is partitioned into four (4) sections, and is accessed via a 25-foot-wide driveway from Parston Drive. (Exhibit 8; T. 33-34)

Zoning History

(2) In 1977 the District Council rezoned the site from the C-2 to the I-1 Zone. As a result of that rezoning, a Site Plan was approved for Powell and Powell. This approval allowed the “storage of contractors and automotive equipment & supplies [in] areas shown on Plan”. (Exhibits 41, 42, 47, (p. 6), and 53(c); T. 6)¹ Applicant submitted copies of the Use and Occupancy Permits issued from December 1, 1977 to 1991 indicating that the property was consistently used for various types of vehicle storage yards and automobile towing station uses. (Exhibit 35)

(3) The subject property was rezoned from the I-1 (Light Industrial) to the I-1 with a D-D-O (Development District Overlay) Zone on November 17, 2009, upon the District Council’s adoption of the 2009 Marlboro Pike Sector Plan and Sectional Map Amendment (“SMA”). The DDOZ does not permit the existing use of the subject property. (Exhibit 26) Thus, the use became nonconforming upon adoption of the DDOZ.

(4) The October 2002 General Plan placed the subject property in the Developed Tier.

(5) The property also lies within Accident Potential Zone 2, as established in the Joint Base Andrews Joint Land Use Study. (Exhibit 47, p. 19)

Surrounding Uses

(6) The subject property is surrounded by property in the I-1 or I-1/D-D-O Business Zone. (Exhibits 19 and 47, p. 23)

Applicant’s Request

(7) The current owner is 7901 Parston Drive, LLC. It has owned the property, in that name, since 1993. (Exhibit 8) The prior owners, Powell & Powell, were the parents, aunt and uncle of the current members of 7901 Parston Drive, LLC. Powell & Powell owned the property in 1977 when the use as a Vehicle Towing Station began. (T. 10-12) One of the members of the LLC offered the following explanation of the ownership of the site:

Ms. Fritz: Powell & Powell was originally my father, mother, uncle, and aunt, all of whom are deceased. Before they died they split, so that this property went with my father and mother, and my uncle and aunt got other things.

On November 29th, 2011 my father died, and at that point I became part owner in the company. And then on September 4th, 2012 my mother died, and so my share in the company increased. Between the time that my

¹ All of these Exhibits are the same Site Plan. Some are easier to read than others. All correctly depict existing conditions on site. (T. 37-38)

father died and my mother died, my husband Wesley Fritz and I began running the company because my mother and father, although they were in their 80s, had been pretty much running it themselves. So we started and basically have kind of followed along doing what we knew were the same things that they had done.

And it appears that no one was aware that there was any change in zoning in 2009. But by the time we were aware that that had happened, they were dead and we had no way of knowing. They didn't keep computerized records. I mean they sort of did, but not very much, so we've kind been playing a lot of catch-up with that sort of thing.

Mr. Hutt: Okay, now the property, at least is 7901 Parston Drive, LLC?

Ms. Fritz: Mm-hmm.

Mr. Hutt: And are you part of that entity?

Ms. Fritz: Yes.

Mr. Hutt: Okay.

Ms. Fritz: I'm a part owner. My brother, sister, and I are all part owners.

Mr. Hutt: Okay, so sort of the Powell & Powell succession is still there, but --

Ms. Fritz: Yes.

Mr. Hutt: - for whatever reason you changed --

Ms. Fritz: Yes, and --

Mr. Hutt: the ownership to an LLC?

Ms. Fritz: Right....

(T. 10-11)

(8) Applicant submitted tax records for years 2006 through 2012. (Exhibit 47, pp. 75-313) They indicate that the LLC owned the subject property during these tax years.

(9) In July 2013, Applicant requested approval of a Use and Occupancy permit to continue operating a "vehicle storage yard and automobile towing station" on site.

(Exhibit 17) Staff reviewed this request and ultimately noted that Applicant had to pursue certification of a nonconforming use first. As a result, Applicant initiated the process of certifying its nonconforming use of the subject property.

(10) Staff submitted the following comment in its review:

This permit is for a vehicle storage yard and automobile towing station within the Low Intensity Business Park Character Area of the Marlboro Pike Development District Overlay Zone (DDOZ), adopted November 17, 2009. The underlying zone is I-1. Vehicle, truck, boat, heavy motorized equipment, trailer storage yard and vehicle towing stations are all currently prohibited uses in this character area. The property was originally constructed as a storage yard per 12346-77-CG and Planning Board approval per ZMA-9051-C. Numerous use and occupancy permits have been issued for various storage yards and vehicle towing stations. The property owner must pursue certification of nonconforming use. **9/5/13 – The application for certification of nonconforming use and all supporting documentation has been submitted and reviewed and deemed complete.... The certification of nonconforming use is for all 4 yards for the proposed use of vehicle storage yard and automobile towing station....**

(Exhibits 7 and 47, p. 317)

(11) As noted above, there are four (4) sections to the property, occupied by four tenants. (Exhibit 42 and 52; T. 19-26) Applicant submitted an Exhibit which identified the tenants on site since as early as 1998, and all prior to the implementation of the DDOZ. (Exhibit 52) It also submitted Exhibits and testimony which show that the property has been continually occupied by various tenants that operated vehicle storage businesses on site. (Exhibits 27(a) – (b), 28, 29 (a) – (c), and 30; T.19-27) Evidence of the rent paid by these entities over the years (until the present) was also provided. (Exhibits 58-51)

(12) Aerials of the property taken in 1980, 1984, 1993, 1998, 2006, and 2011 reveal that the site has been continually used for vehicle storage. (Exhibit 47, pp. 24-29)

LAW APPLICABLE

(1) Pursuant to Section 27-107.01(a)(166) of the Zoning Ordinance, a nonconforming use is defined as follows:

(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.

(2) Pursuant to Sections 27-107.01 (a)(252) and (253) of the Zoning Ordinance, "Vehicle Salvage Yard" and "Vehicle Towing Station" are defined as follows:

(252) **Vehicle Salvage Yard:** A facility for the reclamation or storage of wrecked or abandoned vehicles or parts from vehicles, "Trailers," or "Mobile Homes," which may include the sale of the parts.

(253) **Vehicle Towing Station:** A facility for the storage of wrecked vehicles awaiting adjustment of claims following accidents. No dismantling of vehicles shall be permitted on the premises, nor may any vehicle be stored for more than ninety (90) days.

(3) A Nonconforming Use may be certified if it satisfies the provisions of Section 27-244 of the Zoning Ordinance. That section provides as follows:

Sec. 27-244. Certification.

(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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).

(b) **Application for use and occupancy permit.**

(1) The applicant shall file 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 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 of 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.

(c) **Notice.**

(1) The following notice provisions shall not apply to uses that, with the exception of parking in accordance with Section 27-549, occur solely within an enclosed building.

(2) The Planning Board shall post the property with a durable sign(s) within ten (10) days of acceptance of the application and accompanying documentation. The signs(s) shall provide notice of the application; the nature of the nonconforming use for which the permit is sought; a date, at least twenty (20) days after posting, by which written comments and/or supporting documentary evidence relating to the commencing date and continuity of such use, and/or a request for public hearing from a party of interest will be received; and instructions for obtaining additional information. Requirements regarding posting fees, the number, and the location of signs shall conform to the requirements set forth in Subsection (f), below.

(d) **Administrative review.**

(1) If a copy of a valid use and occupancy permit is submitted with the application, where applicable a request is not submitted for the Planning Board to conduct a public hearing, and, based on the documentary evidence presented, the Planning Board's authorized representative is satisfied as to the commencing date and continuity of the nonconforming use, the representative shall recommend certification of the use as nonconforming for the purpose of issuing a new use and occupancy permit identifying the use as nonconforming. This recommendation shall not be made prior to the specified date on which written comments and/or requests for public hearing are accepted.

(2) Following a recommendation of certification of the use as nonconforming, the Planning Board's authorized representative shall notify the District Council of the recommendation.

(3) If the District Council does not elect to review the recommendation within thirty (30) days of receipt of the recommendation as authorized by Subsection (e), below, the representative shall certify the use as nonconforming.

(4) Subsections (2) and (3), above, and Subsection (e), below, shall not apply to uses that, with the exception of parking in accordance with Section 27-549, occur solely within an enclosed building.

(e) **District Council review.**

(1) The District Council may, on its own motion, vote to review the Planning Board representative's recommendation, for the purpose of determining whether the use should be certified as nonconforming, within thirty (30) days of receipt of the recommendation.

(2) If the District Council decides to review the proposed certification, the Clerk of the Council shall notify the Planning Board of the Council's decision. Within seven (7) calendar days after receiving this notice, the Planning Board shall transmit to the Council all materials submitted to it in connection with the application.

- (3) The Zoning Hearing Examiner shall conduct a public hearing on the application.
- (4) The Zoning Hearing Examiner shall file a written recommendation with the District Council within thirty (30) days after the close of the hearing record.
- (5) Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council.
- (6) Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.
- (7) The District Council shall affirm the certification only if it finds that a nonconforming use exists and has continuously operated.
- (8) The District Council shall make its decision within forty-five (45) days from the filing of the Zoning Hearing Examiner's recommendation. Failure of the Council to take action within this time shall constitute a decision to certify the use.

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CONCLUSIONS OF LAW

(1) The proposed use is generally in conformance with the requirements of Section 27-244(b) of the Zoning Ordinance. The Applicant has filed for certification of a Use and Occupancy permit, and submitted a copy. (Section 27-244(b)(1)) Applicant has submitted copious documents, including tax records and rental statements, showing that the property was used prior to 2009 (when the use became nonconforming) and continuously since that time, as a vehicle towing station and vehicle storage yard. (Section 27-244(b)(2)(A)) This same evidence indicates that the nonconforming use has not ceased to operate since 2009. (Section 27-244(b)(2)(B)) Applicant submitted a legal description of the property, and a Site Plan originally approved in 1977 that shows the precise location and limits of the uses on site. (Section 27-244(b)(2)(C)) Finally, Applicant has submitted a copy of Use and Occupancy permits issued to its predecessor and its tenants prior to the adoption of the Sector Plan that rendered the use nonconforming. (Section 27-244(b)(2)(D))

(3) Accordingly, the District Council has sufficient evidence to support a finding that the use existed prior to the law that rendered it nonconforming, that it has continuously operated since that time, and that it should be certified as nonconforming pursuant to Section 27-244 of the Zoning Ordinance.

RECOMMENDATION

Applicant has operated a Vehicle Towing Station on the subject property since 1978 pursuant to the Site Plan approved in 1977. Accordingly, CNU-25543-2013 is recommended for Approval, certifying the Site Plan submitted in the record. (Exhibit 41)²

² This is one of the better copies of the 1977 Site Plan.