

RESOLUTION

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-3916-2012, Rockport Autos, LLC requesting a certification of a nonconforming use for used vehicle service repair in the M-U-I/D-D-O Zone 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 February 14, 2013, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 8100 Martin Luther King Jr. Highway, is located on the northwest side of Martin Luther King, Jr. Highway (MD 704) and the northeast side of Glenarden Parkway. The subject property consists of a single lot, Lot 12, and is improved with a 1,690-square-foot single-story building, shed and requisite parking. Access to the development is provided via ingress/egress on Martin Luther King, Jr. Highway and Glenarden Parkway.

B. **Development Data Summary:**

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone	M-U-I/D-D-O	Unchanged
Acreage	0.35	Unchanged
Use(s)	Used Car Sales and Service	Unchanged
Lot(s)	1	Unchanged

C. **History:** The subject property was originally constructed as a gas station in 1962 and subsequently converted into an automobile sales and service facility. On June 1, 2010, the property became nonconforming when the property was rezoned to Mixed-Use Infill and placed in a Development District Overlay Zone (M-U-I/D-D-O) via the June 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment*.

At the time the rezoning occurred, the property was in use as a vehicle sales and service facility. Permit No. 44380-2007-U was issued for the same after the property was rezoned Mixed-Use Infill and placed in a Development-District-Overlay-Zone (D-D-O-Z). However, the leasee failed to occupy the property due to various mitigating circumstances. Permit 44380-2007-UW, issued in 2007, was issued in error for used car sales use and should have been validated as permit issued in error not certified as a nonconforming use. Vehicular sales uses on lots less than 25,000 square feet were discontinued per County Council Bill CB-87-2000 and adopted November 14, 2000. The current zoning requires that the property obtain certification as a nonconforming use for vehicle service repair detailed in the analysis and discussion sections of this report.

D. **Request:** The applicant requests certification of an existing vehicle service repair lot. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began when the 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* (SMA) was adopted by the District Council. The property was rezoned from the C-M to the M-U-I and D-D-O zones by the 2010 *Subregion 4 Master Plan and Sectional Map Amendment*. The M-U-I and D-D-O Zones prohibit vehicle sales and service as a land use.

E. **Surrounding Uses:**

**North**—Residential Property zoned M-U-I/D-D-O known as the Glenarden Woods Apartments.

**South**—Property zoned M-U-I improved with the City of Glenarden Municipal Building.

**East**—Johnson Avenue and residential property zoned M-U-I.

**West**—Residential property zoned M-U-I.

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

(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 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 on 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.**

**Analysis**—According to the applicant's documentation, to their knowledge, the subject property has been continuously used as a vehicle sales and service lot since the owner purchased the property in 2007, all the while, being in compliance with the regulations of the C-M Zone. Section 27-446 Part 6 B(1)(b)(1) of the Zoning Ordinance provides that vehicle sales lots are permitted in the C-M Zone. However, Footnote 37 stipulates that except for new vehicle sales lots, the use shall be located on a tract of land containing a minimum of 25,000 square feet. All such uses on property less than 25,000 square feet in existence since September 1, 2000, may not be certified as nonconforming uses and must cease operations on or before August 31, 2003. Since the property has only 15,232 square feet in the C-M Zone, Permit 44380-2007-UW was issued in error in 2007 for used car sales use. Given this error the permit should be validated as a permit issued in error and not certified as a nonconforming use for vehicular sales. However, Use and Occupancy Permit 22293-2011, which was approved by the Maryland-National Capital Park and Planning Commission (M-NCPPC) Permit Review staff on August 22, 2011, was issued in error based upon a previous permit (44380-2007-U) also issued in error. Therefore, the applicant can only request certification for a nonconforming use for a vehicle repair use and not the vehicle sales because that use was discontinued per County Council Bill CB-87-2000.

Per the applicant, the property became nonconforming on June 1, 2010, with the adoption of the 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* (SMA). At that time, the subject property was under lease and being used as a vehicle sales and service lot. However, the occupant was evicted on or about April 7, 2011, due to the non-payment of rents. The eviction

was ratified by the District Court of Maryland on May 9, 2011. On or about August 9, 2011, the property owner entered into a lease agreement with a new tenant, C&J Auto Repair (the tenant). Per the regulations, the new tenant applied for a Use and Occupancy Permit 22293-2011, which was approved by M-NCPPC staff on August 22, 2011, for a vehicle sales and service use. However, C&J Auto Repair failed to fully occupy the property and operate a vehicle sales and service business due to a myriad of circumstances that included the correction of County Code violations, which resulted in the termination of the lease agreement with the property owner on or about September 27, 2011. Subsequently, the subject property did pass inspection by the Department of Environmental Resources (DER), but the lease agreement was rescinded and funds returned on or about September 27, 2011.

The property owner did continue to seek a new tenant within the prescribed 180-day timeframe via the posting of a "For Lease" sign at the subject site. However, despite the efforts of the owner a new lease agreement was not signed until January 1, 2012, with Rockport Autos, LLC, who in turn applied for a use and occupancy permit for a vehicle sales and service use. However, due to the fact that a vehicle sales and service use was not operational on the subject property one hundred eighty days from April 18, 2011 to the date of application (February 15, 2012), the application was referred to the Planning Board to determine whether, in fact, the use was legally established prior to the date it became nonconforming and whether nonoperation for more than 180 consecutive calendar days was beyond the applicants/owner's control.

The applicant submitted the following documentary evidence in support of the application:

1. Property Deed (Exhibit 1):
2. Commercial Lease Agreement between Eglin Jolly and Vinton C. Rattiagn dated August 3, 2011 (Exhibit 2).
3. Warrant for Restitution dated May 2011 (Exhibit 3).
4. Commercial Lease Agreement between Eglin Jolly and Cuong V. Luong dated August 1, 2011 (Exhibit 4).
5. Letter from the City of Glenarden Code Enforcement Officer Dennis Johns dated August 16, 2011 citing that 8100 Martin Luther King Highway has changed zones since June 1, 2010 and continued business through April 18, 2011 (Exhibit 5).
6. Permit 22293-2011-U approved on August 22, 2011, by M-NCPPC (Exhibit 6).
7. Prince George's County Department of Environmental Resources License and Inspections Group Correction Order dated September 1, 2011(Exhibit 7).
8. Contractor's proposal to replace roof and copies of checks dated September 24, 2011 and September 28, 2011 (Exhibit 8).

9. Department of Environmental Resources Inspection note dated September 27, 2011 (Exhibit 9).
10. Release Agreement between Eglin Jolly and Cuong V. Luong dated September 27, 2011 (Exhibit 10).
11. Cashier's check dated September 27, 2011 (Exhibit 11).
12. Commercial Lease Agreement between Eglin Jolly and Rockport Autos, LLC and Ian Hill dated January 1, 2012 (Exhibit 12).
13. Use and Occupancy Permit Application 3916-2012-00 (Exhibit 13).
14. Photograph of For Lease sign advertising the availability of the subject property visible from the street.
15. Telephone records from the applicant of prospective tenants inquiring about the subject site.
16. Affidavit from Ian Hill citing advertisement of property for lease.
17. E-mail from Mr. Tariq Chaudhry citing advertisement of property for lease.
18. Hearing Exhibit 1—Legal brief by Puja Gupta, Esq. with six attachments.

## DISCUSSION

The applicant can only request certification for a nonconforming use for a vehicle repair use and not the vehicle sales because that use was discontinued per County Council Bill CB-87-2000. The applicant, in the statement of justification, states that the subject site has been used as a vehicle sales and service lot uninterrupted since the property was purchased by Eglin Jolly in 2007 through April 7, 2011 when the tenant was evicted. A new tenant, C&J Auto Repair was secured and a new Use and Occupancy Permit was approved on August 22, 2011. All within the 180 consecutive calendar days requirement set forth in Section 27-244(b)(2)B of the Zoning Ordinance.

Upon consideration of the evidence provided, including the applicant's testimony at the hearing, the County Ordinance allows the Planning Board to approve a nonconforming use that has not been operated for more than 180 consecutive calendar days if the circumstances were beyond the applicant's control. In staff's opinion, the applicant has not provided sufficient evidence that supports the applicant's claim of extenuating circumstances for the nonoperation of a vehicle service repair business. The applicant has attempted to demonstrate that every effort was made to ensure a business was operating on the subject property within the required time frame through the submission of documents that included lease agreements, copies of approved Use and Occupancy permits, mitigation of code violations, and proof of advertisements via photos of the "For Lease" sign, phone records and affidavits. However, the

information is insufficient to show that the circumstances which led to non-operation of the use for more than 180 days were indeed beyond the applicant's control. The applicant's assertion that the mitigation of County Code violations, influenced the rescinding of the lease agreement between the owner and the tenant, C&J Auto, was caused by the delayed approval of the Use and Occupancy permit 22293-2011, for C&J Auto, and the application of a new Use and Occupancy Permit by Rockport Auto in February 2012, does not explain why the conditions of nonoperation exceeded 180 consecutive calendar days. The application filing date for a use and occupancy permit for Rockport Auto exceeded 180 consecutive calendar days by an additional 90 days. The applicant has not provided sufficient evidence indicating that she was actively seeking a tenant for the subject property, and explaining the gap in time from September 27, 2011 to February 2012, when the application for the new use and occupancy permit was submitted.

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 DISAPPROVED 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 Geraldo, seconded by Commissioner Hewlett, with Commissioners Geraldo, Hewlett voting in favor of the motion, with Commissioner Shoaff opposing the motion, and with Commissioners Bailey and Washington absent at its regular meeting held on Thursday, February 14, 2013, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 7<sup>th</sup> day of March 2013.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator