

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

**CERTIFICATION OF NONCONFORMING USE
CNU-31260-2015**

DECISION

Application:	Certification of a Nonconforming Use
Applicant:	Laney Recycling, LLC
Opposition:	None
Hearing Date:	November 30, 2016
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) CNU-31260-2015 is a request for the certification of a Nonconforming Concrete Recycling Facility on approximately 7.325 acres of land, located on the west side of Old Gunpowder Road, north of the intersection of Contee Road and approximately 300 feet south of the intersection of Old Gunpowder Road and Sandy Spring Road, identified as 14852 Old Gunpowder Road, Laurel, Maryland.
- (2) The Planning Board did not elect to consider this Application and the Technical Staff recommended approval of the request for certification. (Exhibit 4)
- (3) No one appeared in opposition to the request at the evidentiary hearing held by your Examiner. The record was kept open after the evidentiary hearing for the inclusion of certain items, upon receipt of which the record was closed on January 18, 2017.

FINDINGS OF FACT

Subject Property

- (1) The subject property is a roughly hatchet shaped parcel of land comprising Tax Map 5, Grid A-3, Parcel 224 and identified in the Land Records of Prince George's County at Liber 25824, Folio 186. The subject property was purchased by the Applicant on August 7, 2006 and has continuously operated Concrete Recycling Facility on the subject property since that date. (Exhibit 22) The Applicant purchased the subject property from Eric Seline, who owned and purchased the subject property on July 18, 1986 and continuously operated a Concrete Recycling Facility including up to three (3) concrete crushers on the property beginning in 1988 until the sale of the property in 2006 to the Applicant. (Exhibit 23)

(2) The subject property has been developed and utilized as a Concrete Recycling Facility since 1988 as a permitted use in the I-2 (Heavy Industrial) Zone. The subject property continues to be zoned I-2.

(3) In 2004 the Prince George's County Council, sitting as the District Council, enacted CB-78-2004 which amended the Zoning Ordinance to require a Special Exception for a Concrete Recycling Facility.

Applicant's Request

(4) The subject property has been developed and utilized as a Concrete Recycling Facility since 1988. The Applicant has owned and operated the subject property as a Concrete Recycling Facility with up to three (3) crushers since August 7, 2006. The instant use has operated in accordance with Use and Occupancy Permit #5601-94-U ("Recycling Non-Ferrous Materials"), Permit #5210-2001-CGU (Trailer), and Permit #3171-2011 ("Concrete Recycling Facility"). The Applicant is seeking to certify the Concrete Recycling Facility as a Certified Nonconforming Use.¹

(5) The Applicant has submitted evidence including business records, government records, and utility records indicating that the instant Concrete Recycling Facility has operated continuously since prior to 2004. (Exhibit's 9, 15, 16, 17, 18, 21, 25, 28, 29, 30, 31, 32, 33 and 35)

(6) The Applicant's predecessor in interest, Mr. Eric Seline, submitted an Affidavit affirming the continuous operation of a Concrete Recycling Facility on the subject property from 1988 until its sale to the Applicant August 7, 2006. (Exhibit 23)

(7) The Applicant's as-built Site Plan, Exhibit 20, dated March, 2015, is submitted as the Use and Occupancy Site Plan for Nonconforming Use. There was testimony at the evidentiary hearing and photographic evidence which suggests that the subject use may have exceeded the boundaries of the subject property and is operating on adjacent properties. The Applicant proffered Conditions that a civil engineer inspect the subject property to insure that the operation of the Concrete Recycling Facility does not exceed the boundaries of the subject property and that the operation is in accordance with the Site Plan. (Exhibit 20)

LAW APPLICABLE

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

- (a) Terms in the Zoning Ordinance are defined as follows:
(166) **Nonconforming Use:**

¹ During the pendency of the instant Application the Applicant discovered that it had made a contribution to "Friends of Rushern L. Baker". The Applicant requested and received a refund of its contribution from "Friends of Rushern L. Baker". (Exhibits 41-43)

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

(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 sign(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 in conformance with the requirements of §27-244 of the Zoning Ordinance. The Applicant has applied for a new Use and Occupancy permit for a Concrete Recycling Facility on the subject property, #31260-2015-00. (Exhibit 34) The Applicant has provided a plethora of documentation, including but not limited to tax records, Maryland Department of the Environment permits, Use and Occupancy permits, utility records, and aerial photographs,

supporting the continuance of use of a legally established Concrete Recycling Facility on the subject property since prior to the adoption of CB-78-2004. The Applicant has also provided an as built Site Plan, Exhibit 20, which shows the exact nature, size and location of the use of the subject property.

(2) The record thus contains abundant and uncontroverted evidence which supports a finding that the Concrete Recycling Facility should be certified as a Nonconforming Use pursuant to §27-244 of the Zoning Ordinance.

RECOMMENDATION

CNU-31260-2015 is recommended for Approval, certifying the Site Plan, Exhibit 20, subject to the following Conditions:

(1) Prior to issuance of a certificate of occupancy, the Applicant shall submit a certification from a civil engineer registered in the State of Maryland. Said certification shall provide:

- (a) That the three buildings on the property which were constructed without permits have been razed pursuant to a raze permit issued by Prince George's County; and
- (b) That the property has been surveyed by a civil engineer or surveyor licensed in the State of Maryland and that all improvements, equipment and/or material stockpiles or any other uses/activities associated with the Concrete Recycling Facility are located only on the property subject to this Application.