Case No. CNU-3916-2012
Rockport Autos, LLC

Applicant: Rockport Autos, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 13-17, to DISAPPROVE an application for certification of a non-conforming use, CNU-3916-2012, of an existing vehicle service lot, located at 8100 Martin Luther King Jr. Highway, on the northwest side of Martin Luther King, Jr. Highway (MD 704) and the northeast side of Glenarden Parkway, and which became non-conforming pursuant to the 2010 *Approved Subregion 4 Master Plan and Sectional Map Amendment* adopted in accordance with Subtitle 27 of the Prince George's County Code, is AFFIRMED, subject to the District Council's original jurisdiction over CNU-3916-2012 pursuant to §27-132(f)(1) and its authority to modify the decision of the Planning Board pursuant to 27-244 of the Zoning Ordinance.

As the basis for this action, the District Council, pursuant to §§ 27-132(f)(1) and 27-244 of the Zoning Ordinance, states its findings and conclusions in Attachment A of this Order.

ORDERED this 1st day of October, 2013, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Lehman, Patterson, Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Olson.

Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND, SITTING AS THE DISTRICT COUNCIL FOR THAT PART OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT IN PRINCE GEORGE'S COUNTY, MARYLAND

BY: _____
Andrea C. Harrison, Chair

ATTEST:

_____
Redis C. Floyd
Clerk of the Council

**ATTACHMENT A**

ORDER OF DENIAL-CNU-3916-2012

PROCEDURAL HISTORY, FINDINGS AND CONCLUSIONS

## Procedural History

On or about July 28, 2012, the Prince George's County Planning Department, Development Review Division, accepted application CNU-3916-2012, which requested certification of a non-conforming use for the used vehicle service repair in the M-U-I Zone (Mixed Use-Infill)/D-D-O Zone (Development District Overlay). *See* Technical Staff Report, 1/13/2013.

On or about January 23, 2013, Technical Staff completed its report and recommended disapproval of application CNU-3916-2012.

On or about November 15, 2012, a hearing was scheduled on application CNU-3916-2012 before the Planning Board. The November 15 hearing was continued at the request of the Applicant to allow recently retained counsel, Puja Gupta, Esquire, Joseph Greenwald & Laake, 6404 Ivy Lane, Suite 400, Greenbelt, Maryland 20770, additional time to prepare. *See* (11/15/2013 Tr.)

On or about October 11, 2012, Planning Staff and the Applicant requested a continuance to allow the Applicant more time to submit additional information. *See* (10/11/2012 Tr.)

On or about December 13, 2012, the Applicant requested another continuance, and over the objection of Suellen Ferguson, Esquire, on behalf of the City of Glenarden, the Planning Board continued the December 13 hearing to February 14, 2013. *See* (12/13/2012 Tr.)

On February 14, 2013, a public hearing was finally held and concluded on application CNU-3916-2012. After consideration of the evidence presented at the public hearing, the Planning Board voted to deny application CNU-3916-2012. *See* (2/14/2013 Tr.)

On March 7, 2013, the Planning Board adopted PGCPB No. 13-17, which contained its findings and conclusions denying application CNU-3916-2012. *See* PGCPB No. 13-17.

On March 25, 2013, the District Council, pursuant to §27-244 of the Zoning Ordinance,[1] elected to review this matter.

On March 25, 2013, the Clerk of the County Council transmitted this matter to the Zoning Hearing Examiner to hold a public hearing prior to final action by the District Council.

On April 11, 2013, Puja Gupta, Esquire, on behalf of the Applicant, filed an appeal to the District Council, and requested oral argument.

On April 19, 2013, the Zoning Hearing Examiner returned this case to the Clerk of the Council pursuant to §27-244(5)(A)(B)(C).

On July 8, 2013, the District Council, pursuant to §27-132, and the District Council Rules of Procedure, held oral arguments, and subsequently took this matter under advisement.

On August 20, 2013, the Applicant's attorney, Puja Gupta, Esquire, Joseph Greenwald and Laake, withdrew/struck her appearance/representation in this matter.

On September 9, 2013, the District Council, pursuant to §27-132, referred this item to staff to prepare an order of denial.

[1] *See* Prince George's County Code, Subtitle 27, Zoning Ordinance, (2008-09 ed., as amended) (hereinafter "§ 27- __").

## Applicable Law

**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**. §27-244 (Emphasis added.)

§27-244 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 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.

**Findings and Conclusions**

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. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

The subject property was originally constructed as a gas station in 1962 and subsequently converted into an automobile sales and service facility. The County subsequently adopted County Bill 87-2000 in November 2000, which discontinued vehicular sales uses on lots less than 25,000 square feet. §27-446 Part 6 B(1)(b)(1) provides that vehicle sales lots are permitted in the C-M Zone. However, Footnote 37 of §27-446 Part 6 B(1)(b)(1) 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.

In 2007, Permit 44380-2007-UW was issued in error in 2007 for used car sales use because the subject property has only 15,232 square feet in the C-M Zone. Because of this error,

the permit should be validated as a permit issued in error and not certified as a nonconforming use for vehicular sales. Subsequently, Park and Planning Permit Review staff mistakenly approved Use and Occupancy Permit 22293-2011 in August 2011, which was issued in error based Permit 44380-2007-UW, also issued in error.[2]

On June 1, 2010, the property became nonconforming when the property was rezoned, from the C-M to Mixed-Use Infill and placed in a Development District Overlay Zone (M-U-I/D-D-O), in the 2010 *Approved 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. The current zoning requires that the property obtain certification as a nonconforming use for vehicle service repair. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

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. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

The subject property is surrounded by the following 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.

[2] We note that pursuant to §27-246, only the District Council may validate permits issued in error. *See* 27-246. Validation of permits issued in error. Any building, structure, or use, for which a permit issued in error has been validated by the District Council in accordance with Section 27-258, shall be deemed a nonconforming building or structure, or a certified nonconforming use, unless otherwise specified by the Council when it validates the permit. The nonconforming building or structure, or certified nonconforming use, shall be subject to all of the provisions of this Division.

*See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

The applicant requests certification of an existing vehicle service repair lot.

In 2010, after the subject property was rezoned, the subject property was under lease (Rattigan Lease) and was used as a vehicle sales and service lot. The Rattigan Lease ended after the tenant was evicted on April 7, 2011, pursuant to eviction proceedings initiated by the owner of the subject property. The eviction was ratified by the District Court of Maryland on May 9, 2011 and the tenant lost possession and control of the property.

On or about August 9, 2011, the property was under another lease (C&J Lease). The C&J Lease was subsequently terminated and rescinded by the owner of the subject property on or about September 27, 2011. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

The record evidence shows that the nonconforming use at the subject property **ceased** from April 7, 2011, through February 15, 2012, (the filing of the application). *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.). Therefore, according to the record, there was a period of inactivity or conditions of nonoperation at the subject property for approximately **10 months**.

On January 1, 2012, the subject property was under another lease with the appellant, Rockport Autos, LLC (Rockport Lease or Appellant). The Rockport lease was signed on or about January 1, 2012. The Appellant subsequently applied for a use and occupancy permit for a vehicle sales and service use. Because a vehicle sales and service use ceased to operate on the subject property for more than 180 days, 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 appellant submitted the following documentary evidence in support of the its application filed on or about February 15, 2012:

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.

Absent from the record is 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.** We have reviewed the applicant's evidence in support of its application for certification, other documents in the record, and testimony from the parties contained in the February 14, 2013, transcript before the Planning Board, in context with oral arguments from the parties on July 8, 2013. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

The Rattigan Lease

We reject the applicant's argument that the Rattigan Lease is evidence that the nonconforming use did not cease 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 because it had an expiration date of August 1, 2012. Our review of the record evidence leads us to conclude that the Rattigan Lease could not have been continuing because the tenant was evicted on April 7, 2011, which was subsequently ratified by the District Court of Maryland. The evidence confirms that the Rattigan Lease **discontinued** after the tenant was evicted and the eviction was ratified by the Court. Additionally, the owner of the subject

property **intentionally** executed another lease with another tenant to occupy the premise for the same nonconforming use for a period of 5 years, with a lease expiration date of July 31, 2016. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

Under appellant's theory, if the Rattigan Lease was a 99-year term lease but the tenant breached or was legally evicted from the nonconforming use premise, the non-conforming use **could cease to operate for 98 years without violating §27-244**, if the applicant was never able to secure a tenant for 98 years. We do not construe our ordinance in such a nonconforming fashion. *See Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996), *McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (An agency's interpretation of the statute that it administers will be given considerable weight).

Telephone Records

We are not persuaded that the owner made diligent efforts to resume the nonconforming use during the almost **10 month period of inactivity**. An examination of the telephone records reveals nothing more than hand-written telephone numbers on a white sheet of paper and Sprint telephone records of calls lasting at most 1 to 2 minutes to solicit prospective tenants to lease a .35 acre use car sales and service lot in the M-U-I/D-D-O Zone. There was no evidence in the record that the hand-written numbers identified on a white sheet of paper was of prospective tenants, other than the owner's self-serving testimony. Similarly, the Sprint telephone records show nothing more than random telephone numbers. Nor was there any evidence or testimony from any of the prospective tenants that matched any of the hand-written telephone numbers or telephone numbers on the Sprint telephone records. We find it unpersuasive, in light of the owners testimony that it took months to negotiate leases with actual entities, that hand-written telephone numbers on a white sheet of paper and random telephone numbers appearing on a

Sprint telephone records is evidence that the owner made a diligent effort to resume the use during the **10 month inactivity period or conditions of nonoperation** at the subject property. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

Property Owner's Control

We are also not persuaded by the evidence that **10 month inactivity period or conditions of nonoperation** for more than 180 consecutive calendar days were beyond the control of the owner. The owner took legal action to evict the tenant under the Rattigan Lease, which the District Court ratified. Subsequently the owner never maintained the property in compliance with County Code, but entered into the C&J Lease. The C&J Lease ended abruptly because the tenant claimed he was frustrated by the near two-month delay he encountered before he was permitted to commence the nonconforming use at the subject property. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.).

The record evidence also reveals that the last submitted piece of documentation to the Permit Review Section of the County was dated 4/18/11. And that the owner was aware of the rezoning and the need for nonconforming use certification because an application and instructions for certification was mailed to her by the Permit Review Section of the County. *See* Technical Staff Report with exhibits, 1/23/13. The record evidence further reveals that the owner did not retain or try to retain a commercial broker to secure a viable tenant to continue the nonconforming use. *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.). We find that based on the facts of this case, from April 7, 2011, through February 15, 2012, the almost **10 month inactivity period or conditions of nonoperation of the nonconforming use** at the subject property was not beyond the control of the owner.

Statutory Construction

We approach the construction of the provisions of the Zoning Code in the case *sub judice* mindful of well-settled rules governing our role. The cardinal rule of statutory interpretation is to ascertain and give effect to the intention of the legislative body which enacted the statute. The primary source to which we refer to determine legislative intention is the language of the statute itself. *See Blum v. Blum*, 295 Md. 135, 140, 453 A.2d 824 (1983), *Ford Motor Land Development v. Comptroller*, 68 Md. App. 342, 346-47, 511 A.2d 578, *cert. denied*, 307 Md. 596, 516 A.2d 567 (1986). Furthermore, the statute must be construed considering the context in which the words are used and viewing all pertinent parts, provisions, and sections so as to assure a construction consistent with the entire statute. *Comptroller v. Mandel Re-election Com.*, 280 Md. 575, 579, 374 A.2d 1130 (1977). Finally, we may not rewrite the statute by inserting or omitting words therein to make the legislation express an intention not evidenced in its original form, or to create an ambiguity in the statute where none exists. *Hunt v. Montgomery County*, 248 Md. 403, 414-15, 237 A.2d 35 (1968); *Montgomery County v. Fulks*, 65 Md. App. 227, 233, 500 A.2d 302 (1985).

Applying these precepts to the task at hand, we find no ambiguity in §27-244 of the Zoning Ordinance. §27-244 plainly provides in pertinent part, the following specific requirements for certifying a 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. (Emphasis added.)

Appellant argues that even if we do not conclude that the reasons for nonoperation on the subject property for more than 180 days was due to reasons "beyond the applicant's control," or that a lawful nonconforming use was continuing through August 1, 2012, the Council should conclude that the use did not "cease" because it was involuntary.

A similar argument was rejected by the Court of Appeals in *Canada's Tavern v. Glen Echo*, 260 Md. 206, 271 A.2d 664 (1970). There a restaurant had been operated in a building as a nonconforming use under the Montgomery County Zoning Code until the owner's health required her to discontinue working. Thereafter she leased the restaurant to a tenant who continued its operation until he lost his liquor license and went out of business. The owner of the building was unsuccessful in finding another tenant for over a year, during which time no use was made of the building. The Court held that, notwithstanding the property owner's undisputed intention to resume the nonconforming use of the building when the restaurant was closed, the nonconforming use had been abandoned under the provisions of the Zoning Code providing: No nonconforming use, once abandoned, shall thereafter be re-established. For the purpose of this section, 'abandoned' shall be defined as the cessation of a nonconforming use for a period of six months or more. Commenting on the intention of the Montgomery County Council in enacting that statute, the Court observed: We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuance or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable factual situations. 260 Md. at 211, 271 A.2d 664.

We believe that observation is applicable to the plain legislative intention expressed in §27-244. *See Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97, 684 A.2d 804 (1996),

*McCullough v. Wittner*, 314 Md. 602, 612, 552 A.2d 881 (1989) (An agency's interpretation of the statute that it administers will be given considerable weight).

Furthermore, *McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 306 A.2d 524 (1973), relied on by the appellant, is distinguishable. There the zoning ordinance being construed contained two provisions relating to abandonment of nonconforming uses.

The first, which concerned nonconforming land uses, stated:

> If any such non-conforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the zone in which such land is located. 269 Md. at 468, 306 A.2d 524.

The second, dealing with nonconforming uses of a structure or structure and premises in combination, provided:

> When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months or for 18 months during any three-year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the zone in which it is located. 269 Md. at 468-69, 306 A.2d 524.

The Court of Appeals held that under the second provision above quoted the question of the user's intent in ceasing the operation of an industrial plant in a structure and premises as a nonconforming use was relevant to whether an abandonment of that use had taken place. The Court pointed out that the effect of the cessation of a nonconforming use must necessarily turn on the language of the ordinance governing abandonment of such uses. The Court then observed:

> Under the Ordinance now before us, it might be argued that a cessation of a nonconforming use of land for a period of more than 90 days would result in the loss of the use because this would be the equivalent of abandonment, despite the fact that the Ordinance does not so provide as it did in *Canada v. Glen Echo, supra*.

Later on, when the Ordinance deals with a nonconforming use of structures, or structures and premises, it substitutes for the word "ceases" the alternative of "is discontinued or abandoned."

By comparison, § 27-244 of the Zoning Ordinance which we construe mandates that the cessation of a nonconforming use for a specified period of time is the equivalent of abandonment. Accordingly, since the nonconforming use of the subject property **ceased** for more than 180 days, from April 7, 2011, through February 15, 2012, the appellant abandoned it. *See Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 581, 709 A.2d 749 (1998) (Abandonment…focuses not on the owner's intent, but rather, on whether the owner failed to use the property as a nonconforming use in the time period specified in the zoning ordinance. And there is no hard and fast rule in nonconforming use abandonments that intent to abandon must be actually shown).

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** the District Council certifies that the use is nonconforming and not illegal. §27–244(a) (1). (Emphasis added). Although a lawful nonconforming use is a vested right, it is the aim of zoning to reduce as speedily as possible nonconformance to conformance, with due regard to the legitimate interests of all parties, but the right to continue a nonconforming use is not a perpetual easement to make a use of one's property detrimental to his neighbors and forbidden to them. *County Comm'rs of Carroll County v. Uhler*, 78 Md. App. 140 552 A.2d 942; (1989), *cert. denied*, 316 Md. 428, 559 A.2d 791 (1989) *cf. Higgins v. City of Baltimore*, 206 Md. 89, 98, 110 A.2d 503 (1955); *Amereihn v. Kotras*, 194, Md. 591, 601, 71 A.2d 865 (1950); *Laque v. State*, 207 Md. 242, 251, 113 A.2d 893, *cert. denied*, 350 U.S. 863, 76 S.Ct. 105, 100 L.Ed. 765 (1955); *Grant v. City of*

*Baltimore*, 212 Md. 301, 307 129 A2d 363 (1957). Maryland Courts have recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, the Courts have recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *County Council of Prince George's County v. E.L. Gardner, Inc.*, 293 Md. 259, 443 A.2d 114 (1982). The aim of the 2010 *Subregion 4 Master Plan and Sectional Map Amendment* in rezoning the property to the M-U-I and D-D-O Zones was to prohibit vehicle sales and service as a land use. The 2010 Plan rezoning of the applicant's property was to reduce as speedily as possible nonconformance to conformance, with due regard to the legitimate interests of all parties. *Uhler*, 78 Md. App. 140 552 A.2d 942; (1989), *cert. denied*, 316 Md. 428, 559 A.2d 791 (1989).

We may **only** affirm the certification of a nonconforming use application if we find, based on the record before the Planning Board, that a nonconforming use exists **and has continuously operated.** §27-244. The record evidence shows that the nonconforming use at the subject property **ceased operation** for approximately **10 months** from April 7, 2011, through February 15, 2012, (the filing of the application). *See* PGCPB 13-17, Technical Staff Report with exhibits, 1/23/13, (2/14/13 Tr.). The burden of proof in any zoning case shall be the Applicant's. §27-142. Based on our review of the record evidence, the Applicant has failed to carry its burden in this case. Therefore, we AFFIRM the decision of the Planning Board in PGCPB No. 13-17, to DISAPPROVE CNU-3916-2012. *See Gardner*, 293 Md. at 268, 443 A.2d at 119 ("These local

ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses.") (citing *City of Hagerstown v. Wood*, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); *Hewitt v. County Comm'rs of Baltimore County*, 220 Md. 48, 59, 151 A.2d 144, 150 (1959); *Mayor of Baltimore v. Byrd*, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); *Colati*, 186 Md. at 658–59, 47 A.2d at 616; *Knox v. Mayor of Baltimore*, 180 Md. 88, 96, 23 A.2d 15, 18 (1941)).

**Conclusion**

For the reasons stated above, the decision of the Planning Board in PGCPB Resolution No. 13-17, to DISAPPROVE Application CNU-3916-2012, is AFFIRMED.