

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

**CERTIFICATION OF NONCONFORMING USE  
CNU-51074-2020**

**DECISION**

Application: Certification of a Non-Conforming Use  
(Outdoor Advertising Sign/Billboard)  
Applicant: Clear Channel Outdoor, LLC/April Mackoff  
Opposition: None  
Hearing Date: May 19, 2021  
Hearing Examiner: Maurene Epps McNeil  
Recommendation: Approval

**NATURE OF PROCEEDINGS**

(1) CNU-51074-2020 is a request to certify a nonconforming Outdoor Advertising Sign ("Billboard") in accordance with applicable provisions of the Zoning Ordinance. The subject property on which the Billboard is erected is approximately 0.14 acre of land in the M-U-TC Zone (Mixed Use Town Center), located at the intersection of East-West Highway and Rhode Island Avenue on Map 042, Grid D3, and identified as 6313 Rhode Island Avenue Drive, Riverdale Park, Maryland. The property lies within the municipal boundaries of the Town of Riverdale Park (the "Town").

(2) The request was originally reviewed and approved by the Planning Director, as the Planning Board's authorized representative. On March 22, 2021 the District Council determined that the request should be reviewed by the Zoning Hearing Examiner prior to final action by the District Council. (Exhibit 1)

(3) No one appeared in opposition to the request at the hearing held by the Zoning Hearing Examiner. Mr. Ryan Chelton participated as the representative of the Town.

(4) At the close of the hearing the record was left open to allow Applicant to submit additional items. These were submitted on June 7, 2021, and the record was closed at that time. (Exhibits 23, 24, 25, 26 and 27)

**FINDINGS OF FACT**

(1) The subject property is located at the intersection of East-West Highway and Rhode Island Avenue in Riverdale Park, Maryland. (Exhibit 9) The owner of the subject property, Gregory S. Preadable, purchased the property in 1990, and entered into a

lease arrangement with the former owner of the billboard, Eller Media Company, that allowed the Billboard to remain on the property. (Exhibit 15) In 2008, Mr. Prendable transferred the property, via deed, to the Gregory S. Prendable Living Trust. (Exhibits 23 and 24) Mr. Prendable submitted an affidavit indicating he had been a tenant on the site from 1981 until his purchase in 1990, and from that time until the present the well-maintained Billboard has been located on the subject property. (Exhibit 27) Applicant Clear Channel Outdoor, LLC's most recent lease with Mr. Prendable expressly notes that the Billboard structure is owned by Applicant, and includes a limited power of attorney authorizing Applicant to make any necessary applications with, and obtain permits from any governmental entities that are required to use and maintain the Billboard. (Exhibits 5 and 18)

(2) Mr. John Ferrante, accepted as an expert in the area of land use planning, testified on the Applicant's behalf, and noted that there was a permit issued for the Billboard at the subject site as early as 1971, and there were leases concerning the Billboard at this location from the late 1970's until the present time. (Exhibits 5, 14, 15 and 18)

(3) Ms. April Mackoff, Vice President of Real Estate and Public Affairs for Clear Channel Outdoor, LLC (and co-Applicant) testified in support of the request. Ms. Mackoff noted that the Billboard was administratively approved by MNCPPC after a review of exhibits that she provided (all of which are a part of the instant record.) (T. 6-11) Ms. Mackoff described the Billboard as containing two bulletin faces placed back-to-back atop a single metal pole. (T.11)

(4) Applicant submitted Panel Histories for the site covering the periods from 2003-2020. Ms. Mackoff explained that Panel Histories are documents generated from a program that keeps track of all advertisements on the two panels ("faces"), which advertisers are utilizing a specific face, the length of each ad campaign, and revenue from the various campaigns.(T. 16-17) The Panel Histories submitted into the record indicate the Billboard has been consistently used for advertisements throughout the period noted above. (Exhibits 5, 19 and 20)

(5) Applicant submitted aerials which show the Billboard was located on the site in 1993, 1998, 2000, 2005, 2006,2007, 2009, 2011, 2014, 2016, 2017 and 2018. (Exhibit 5) Pictures were also submitted that show the Billboard on the site at (or near) the present time. (Exhibits 3, 4 and 11)

(6) Applicant submitted a copy of the Site Plan that accompanied the permit application for certification. (Exhibits 5 and 9)

(7) There was some indication that the Town was originally opposed to the request, primarily due to a concern that the Billboard could be changed to a digital sign. (Exhibit 17; T.11) Applicant's attorney correctly informed the Town that Section 27-630.03 (a) of the Zoning Ordinance (discussed in relevant part, *infra*) would prevent any conversion

to a digital format, and the Town did not note any opposition in the record or at the hearing held by this Examiner.

### **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) Billboards or Outdoor Advertising Signs have generally been prohibited in Prince George's County since the enactment of Council Bill 59-1993. All Billboards in existence at that time, therefore, became nonconforming uses.

(3) A Nonconforming Use may be certified if it satisfies the provisions of Section 27-244 of the Zoning Ordinance. Section 27-244 provides, in pertinent part, 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 is not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division). Any person making use of or relying upon the certification that is violating or has violated any conditions thereof, or that the use for which the certification was granted is being, or has been exercised contrary to the terms or conditions of such approval shall be grounds for revocation proceedings in accordance with this Code.

(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.
- (E)
  - (i) In the case of outdoor advertising signs, the requirements of Section 27-244(b)(2)(B) are not applicable. Documentary evidence, including, but not limited to deeds, tax records, business records, approved plats or development plans, permits, public utility installation or payment records, photographs, and sworn affidavits, showing that the outdoor advertising sign was constructed prior to and has operated continuously since January 1, 2002.
  - (ii) Notwithstanding any provision of this Subtitle to the contrary, in the case of outdoor advertising signs that were in existence as of November 15, 2016, that were certified as nonconforming or could have been certified as nonconforming uses, but were removed prior to December 31, 2018, the owner may be certified pursuant to this Division, provided that the use is accepted as filed through an application for Certification of a Nonconforming Use on or before June 30, 2019.
  - (iii) Notwithstanding any provision of this Subtitle to the contrary, in the case of outdoor advertising signs that were in existence as of November 15, 2016, that were certified as nonconforming or could have been certified as nonconforming uses, but were removed after December 31, 2018, the outdoor advertising sign may be certified pursuant to this Division, provided that an application for Certification of a Nonconforming Use is filed and accepted for processing no later than 180 days after the outdoor advertising sign is removed. Upon approval of the application, a permit to reconstruct the sign may be issued, including a permit to construct a digital billboard provided that said use conforms with the requirements of Section 27-630.03 of this Subtitle.

(c) **Notice.**

- (1) Notice of the proposed application shall be provided by the applicant in accordance with Section 27-125.01 of this Subtitle.
- (2) 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.
- (3) 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) Except for outdoor advertising signs, 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, upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property other than failure to have a use and occupancy permit. This recommendation shall not be made prior to the specified date on which written comments and/or requests for public hearing are accepted.
- (2) For outdoor advertising signs, if satisfactory documentary evidence described in Section 27-244(b)(2)(E) is received, the Planning Board's authorized representative shall recommend certification of the use as nonconforming for the purpose of issuing applicable permits and certifying 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.
- (3) Following a recommendation of certification of the use as nonconforming, the Planning Board's authorized representative shall notify the District Council of the recommendation. Electronic notice of the recommendation for certification shall also be made by the Planning Board's authorized representative not later than seven (7) calendar days after the date of the recommendation. The Planning Director shall also publish the development activity report on the Planning Department's website.
- (4) 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.

(5) Subsections (3) and (4), 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. The Zoning Hearing Examiner shall make the same findings required for Administrative review or approval by Planning Board required in this Section, as well as any other applicable prescriptions regulating the proposed use specified within any other applicable Subtitle of this Code.

(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, and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.

(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.

\* \* \* \*

(4) As noted *supra*, digital billboards are not allowed in certain zones, pursuant to the following provision of the Zoning Ordinance:

**Sec. 27-630.03. Digital Billboards.**

- (a) Digital Billboards are not allowed in Residential or Mixed Use Zones, but may be permitted in other zones, subject to the following requirements:
  - (1) Minimum display time. Each message on the sign must be displayed a minimum of six (6) seconds.

\* \* \* \*

**CONCLUSIONS OF LAW**

- (1) The proposed use is generally in conformance with the requirements of Section 27-244(b) of the Zoning Ordinance.
- (2) The Applicant has filed for certification of a Use and Occupancy permit and submitted a copy. (Section 27-244(b)(1))
- (3) Applicant has submitted copious documents that verify the existence of the billboard prior to the date that such uses became nonconforming and its continuous existence until today, including: aerial photos from various years as early as 1993 until the present time showing the structure on site; leases between the various property owners and the various billboard owners that cover the period from the late 1970's until the present time; documents showing the various advertising campaigns placed on the two billboard owners over the years and the revenue generated; aerials and photos showing a Billboard on site prior to the enactment of the law banning such uses and the present date; and an affidavit from the present owner indicating the sign's existence as early as 1981 and its continued existence since that time. (Section 27-244(b)(2)(A) and (E))
- (4) Applicant submitted a legal description of the property, and a Site Plan , that shows the exact nature, precise location, and limits of the Billboard uses on site. (Section 27-244(b)(2)(C))
- (5) Finally, Applicant has submitted a copy of Use and Occupancy permit issued to its predecessor prior to the changes in the Zoning Ordinance that rendered the use nonconforming. (Section 27-244(b)(2)(D))
- (6) 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**

This Examiner recommends CNU-51074-2020 be Approved in accordance with the Site Plan (Special Purpose Survey) indicating the location and extent of the use. Said Site Plan (Special Purpose Survey) is Exhibit 9 in the record.