

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL
2017 Legislative Session**

Bill No. CB-49-2017
Chapter No. 60
Proposed and Presented by Council Member Taveras
Introduced by Council Member Taveras
Co-Sponsors _____
Date of Introduction October 17, 2017

ZONING BILL

1 AN ORDINANCE concerning
2 Nonconforming Uses – Certification – Approval Requirements
3 For the purpose of amending the statutory criteria set forth in the Zoning Ordinance required for
4 certification of nonconforming uses and revocation for noncompliance for the purpose of
5 safeguarding the public health, safety, and welfare of citizens and residents in Prince George's
6 County.

7 BY repealing and reenacting, with amendments:

8 Sections 27-244, 27-245, and 27-258,
9 The Zoning Ordinance of Prince George's County, Maryland,
10 being also
11 SUBTITLE 27. ZONING.
12 The Prince George's County Code
13 (2015 Edition, 2016 Supplement).

14 SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland,
15 sitting as the District Council for that part of the Maryland-Washington Regional District in
16 Prince George's County, Maryland, that Sections 27-244, 27-245, and 27-258 of the Zoning
17 Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's
18 County Code, be and the same are hereby repealed and reenacted with the following
19 amendments:

SUBTITLE 27. ZONING.

PART 3. ADMINISTRATION.

DIVISION 6. NONCONFORMING BUILDINGS, STRUCTURES, AND USES.

SUBDIVISION 1. GENERAL REQUIREMENTS AND PROCEDURES.

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] 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

1 (iii) The precise location and limits of the use on the property and within any
 2 building it occupies;

3 (D) A copy of a valid use and occupancy permit issued for the use prior to the
 4 date upon which it became a nonconforming use, if the applicant possesses one.

5 (E) In the case of outdoor advertising signs, the requirements of Section 27-
 6 244(b)(2)(B) are not applicable. Documentary evidence, including, but not limited to deeds, tax
 7 records, business records, approved plats or development plans, permits, public utility
 8 installation or payment records, photographs, and sworn affidavits, showing that the outdoor
 9 advertising sign was constructed prior to and has operated continuously since January 1, 2002.

10 (c) Notice.

11 (1) Notice of the proposed application shall be provided by the applicant in accordance
 12 with Section 27-125.01 of this Subtitle.

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

15 [(2)] (3) The Planning Board shall post the property with a durable sign(s) within ten
 16 (10) days of acceptance of the application and accompanying documentation. The signs(s) shall
 17 provide notice of the application; the nature of the nonconforming use for which the permit is
 18 sought; a date, at least twenty (20) days after posting, by which written comments and/or
 19 supporting documentary evidence relating to the commencing date and continuity of such use,
 20 and/or a request for public hearing from a party of interest will be received; and instructions for
 21 obtaining additional information. Requirements regarding posting fees, the number, and the
 22 location of signs shall conform to the requirements set forth in Subsection (f), below.

23 (d) Administrative review.

24 (1) Except for outdoor advertising signs, if a copy of a valid use and occupancy permit
 25 is submitted with the application, where applicable a request is not submitted for the Planning
 26 Board to conduct a public hearing, and, based on the documentary evidence presented, the
 27 Planning Board's authorized representative is satisfied as to the commencing date and continuity
 28 of the nonconforming use, the representative shall recommend certification of the use as
 29 nonconforming for the purpose of issuing a new use and occupancy permit identifying the use as
 30 nonconforming , upon finding, within the administrative record for the application, that the use
 31 to be certified as nonconforming has no outstanding Code violations with the Department of

1 Permitting, Inspections, and Enforcement regarding the property other than failure to have a use
2 and occupancy permit. This recommendation shall not be made prior to the specified date on
3 which written comments and/or requests for public hearing are accepted.

4 (2) For outdoor advertising signs, if satisfactory documentary evidence described in
5 Section 27-244(b)(2)(E) is received, the Planning Board's authorized representative shall
6 recommend certification of the use as nonconforming for the purpose of issuing applicable
7 permits and certifying the use as nonconforming. This recommendation shall not be made prior
8 to the specified date on which written comments and/or requests for public hearing are accepted.

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

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

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

18 (e) District Council review.

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

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

26 (3) The Zoning Hearing Examiner shall conduct a public hearing on the application.
27 The Zoning Hearing Examiner shall make the same findings required for Administrative review
28 or approval by Planning Board required in this Section, as well as any other applicable
29 prescriptions regulating the proposed use specified within any other applicable Subtitle of this
30 Code.

31 (4) The Zoning Hearing Examiner shall file a written recommendation with the District

1 Council within thirty (30) days after the close of the hearing record.

2 (5) Any person of record may appeal the recommendation of the Zoning Hearing
 3 Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's
 4 recommendation with the District Council. If appealed, all persons of record may testify before
 5 the District Council.

6 (6) Persons arguing shall adhere to the District Council's Rules of Procedure, and
 7 argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

8 (7) The District Council shall affirm the certification only if it finds that a
 9 nonconforming use exists ~~{and}~~ has continuously operated , and upon finding, within the
 10 administrative record for the application, that the use to be certified as nonconforming has no
 11 outstanding Code violations with the Department of Permitting, Inspections, and Enforcement
 12 regarding the property, other than failure to have a use and occupancy permit.

13 (8) The District Council shall make its decision within forty-five (45) days from the
 14 filing of the Zoning Hearing Examiner's recommendation. Failure of the Council to take action
 15 within this time shall constitute a decision to certify the use.

16 (f) Planning Board review.

17 (1) Required hearing.

18 (A) If a copy of a valid use and occupancy permit is not submitted with the
 19 application, if the documentary evidence submitted is not satisfactory to the Planning Board's
 20 authorized representative to prove the commencing date or continuity of the use, or if a public
 21 hearing has been requested by any party of interest challenging the commencing date and/or
 22 continuity of the use, the Planning Board shall conduct a public hearing on the application for the
 23 purpose of determining whether the use should be certified as nonconforming.

24 (2) Application for certification.

25 (A) Whenever the Planning Board will hold a hearing on a certification of the use
 26 as nonconforming, the applicant shall complete the appropriate form provided by the Planning
 27 Board.

28 (3) At least seven (7) calendar days prior to the public hearing, the Planning Board
 29 shall send written notice of the date, time, and place of the hearing to the applicant and to all
 30 persons of record.

31 (4) Planning Board action.

1 (A) The Planning Board may decide to either grant or deny certification of the use
2 as nonconforming. If it decides to certify that a nonconforming use actually exists and has
3 continuously operated and upon finding, within the administrative record for the application, that
4 the use to be certified as nonconforming has no outstanding Code violations with the Department
5 of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a
6 use and occupancy permit.

7 (B) The [decision] recommendation of the Planning Board shall be in the form of
8 a resolution adopted at a regularly scheduled public meeting. The resolution shall set forth
9 findings of fact and conclusions of law in support of the Planning Board's [decision]
10 recommendation.

11 (C) The Planning Board shall send a copy of the resolution to all persons of
12 record.

13 (5) District Council election to review; Appeal of Planning Board's [decision]
14 recommendation.

15 (A) The [decision] recommendation of the Planning Board may be appealed by
16 any person of record to the District Council by filing an appeal with the Clerk of the Council. In
17 addition, and notwithstanding any appeal of the Planning Board's recommendation filed by a
18 person of record, the District Council may, on its own motion, vote to review the Planning
19 Board's recommendation for the purpose of making a final decision as to whether the use should
20 be certified as nonconforming.

21 (B) The appeal shall be filed , or District Council vote to review the Planning
22 Board recommendation shall occur, within thirty (30) calendar days after the resolution of the
23 Planning Board was mailed. If no appeal is filed, and the District Council does not elect to
24 review the recommendation of Planning Board within thirty (30) calendar days after the
25 resolution of the Planning Board is mailed, the Planning Board's recommendation shall become
26 the final decision as to the application to certify the use as nonconforming.

27 (C) Before the District Council makes a decision on the [appeal] application, it
28 shall hold a public hearing.

29 (D) The Council may decide to affirm, reverse, or modify the [decision]
30 recommendation of the Planning Board. The decision of the Council shall be based on the record
31 made before the Planning Board. No new evidence shall be entered into the record of the case

1 unless it is remanded to the Planning Board and a rehearing is ordered.

2 (g) Applicability.

3 (1) This Section shall not apply to nonconforming buildings or structures occupied by
4 conforming uses. (See Section 27-243.03.).

5 **Sec. 27-245. Revocation of Certification.**

6 (a) Upon a petition filed by the Director of the Department of Permitting, Inspections, and
7 Enforcement (or his designee), or upon its own motion, the Planning Board shall hold a public
8 hearing to determine whether the certification of a nonconforming use should be revoked.

9 (b) The Planning Board shall revoke the certification if it finds that either:

10 (1) There was fraud or misrepresentation in obtaining the certification;

11 (2) A certified nonconforming use has been discontinued for a period of one hundred
12 eighty (180) or more consecutive calendar days, unless the conditions of nonoperation were
13 beyond the control of the owner or holder of the use and occupancy permit; or

14 (3) Any applicable requirements of Section 27-244 or Subdivision 2 of this Division
15 have not been met.

16 (c) The Planning Board shall notify the Director of the Department of Permitting,
17 Inspections, and Enforcement (or his designee) of a revocation. The Director, in turn, shall
18 revoke the use and occupancy permit for the nonconforming use.

19 (d) The decision of the Planning Board may be appealed to the District Council in the
20 same manner as an original certification (Section 27-244(f)(6)).

21 **DIVISION 7. BUILDING, GRADING, AND USE AND OCCUPANCY PERMITS.**

22 **SUBDIVISION 2. PROCEDURES.**

23 **Sec. 27-258. - Validation of permit issued in error.**

24 (a) Authorization.

25 (1) A building, use and occupancy, or absent a use and occupancy permit, a valid
26 apartment license, or sign permit issued in error may be validated by the District Council in
27 accordance with this Section.

28 (b) Application.

29 (1) An application for the validation shall be filed with the Department of Permitting,
30 Inspections, and Enforcement.

31 (2) The application form shall be provided by the Department of Permitting,
32 Inspections, and Enforcement and shall contain the information which the Director of that

1 Department deems is necessary to meet the provisions of this Section.

2 (3) Along with the application, the applicant shall submit the following:

3 (A) A statement listing the names and the business and residential addresses of
4 all individuals having at least a five percent (5%) financial interest in the subject property;

5 (B) If any owner is a corporation, a statement listing the officers of the
6 corporation, their business and residential addresses, and the date on which they assumed their
7 respective offices. The statement shall also list the current Board of Directors, their business and
8 residential addresses, and the dates of each Director's term. An owner that is a corporation listed
9 on a national stock exchange shall be exempt from the requirement to provide residential
10 addresses of its officers and directors;

11 (C) If the owner is a corporation (except one listed on a national stock
12 exchange), a statement containing the names and residential addresses of those individuals
13 owning at least five percent (5%) of the shares of any class of corporate security (including
14 stocks and serial maturity bonds);

15 (4) For the purposes of (A), (B), and (C) above, the term "owner" shall include not
16 only the owner of record, but also any contract purchaser.

17 (c) Transmittal.

18 (1) The application and accompanying material shall be forwarded by the Department
19 of Permitting, Inspections, and Enforcement to the Office of the Zoning Hearing Examiner.

20 (d) Zoning Hearing Examiner hearing procedures.

21 (1) The Zoning Hearing Examiner shall conduct a public hearing on the matter in
22 accordance with Part 3, Division 1, Subdivision 2 of this Subtitle.

23 (2) The Zoning Hearing Examiner shall review the application for conformance with
24 subsection (g) of this Section.

25 (e) Notice of public hearing.

26 (1) The Zoning Hearing Examiner shall designate a date for the public hearing and
27 shall notify the applicant of the date.

28 (2) The Clerk of the Council (or the office of the Zoning Hearing Examiner) shall
29 publish a notice of the hearing at least thirty (30) days prior to the hearing date, at least one (1)
30 time in the County newspapers of record.

31 (3) The notice shall contain:

1 (A) The date, time, and place of the hearing;

2 (B) A description and location of the property; and

3 (C) A description of the nature of the request.

4 (f) District Council hearing (oral argument) procedures.

5 (1) The District Council shall decide upon the application, in accordance with the
6 procedures for oral argument and Council hearings contained in Part 3, Division 1, Subdivision 3
7 of this Subtitle.

8 (g) Criteria for approval.

9 (1) The District Council shall only approve the application if:

10 (A) No fraud or misrepresentation had been practiced in obtaining the permit;

11 (B) If, at the time of the permit's issuance, no appeal or controversy regarding its
12 issuance was pending before any body;

13 (C) The applicant has acted in good faith, expending funds or incurring
14 obligations in reliance on the permit; and

15 (D) The application meets the criteria of Section 27-244 of this Subtitle; and

16 (E) The validation will not be against the public interest.

17 (h) Status as a nonconforming use.

18 (1) Any building, structure, or use for which a permit issued in error has been
19 validated by the Council shall be deemed a nonconforming building or structure, or a certified
20 nonconforming use, unless otherwise specified by the Council when it validates the permit. The
21 nonconforming building or structure, or certified nonconforming use, shall be subject to all of the
22 provisions of Division 6 of this Part.

SECTION 2. BE IT FURTHER ENACTED that the provisions of this Ordinance are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Ordinance, since the same would have been enacted without the incorporation in this Ordinance of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

SECTION 3. BE IT FURTHER ENACTED this Ordinance shall take effect on the date of its adoption.

Adopted this 14th day of November, 2017.

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: _____
Derrick Leon Davis
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.