

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed Certification of Nonconforming Use CNU-45099-2014-01 requesting certification of a nonconforming use for a parking compound in the R-55 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 June 25, 2015, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The rectangle shaped property is located on the south side of Magnolia Street, approximately 150 feet east of the intersection with Baltimore Avenue (US 1) and Mulberry Street. The subject property, identified as Lot 21, has a net lot area of approximately 43,450 square feet. The property, known as Nuzback Restaurant and Bar, located at 14405 Baltimore Avenue, is improved with an attached one-story and two-story brick building and a 50-space parking lot. The restaurant and bar area has a gross floor area (GFA) of 3,865 square feet. The subject property is spilt zoned: the bar and restaurant, zoned Commercial Shopping Center (C-S-C), is located at the front of Lot 21 adjacent to US 1; and the parking compound, zoned One-Family Detached Residential (R-55), is located at the rear of the property. Access to the development is provided egress/ingress on US 1. A single loading space is provided.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	C-S-C/ R-R	Unchanged
Acreage	1.033	Unchanged
Gross Floor Area	3,685 sq. ft.	Unchanged
Use(s)	Commercial	Unchanged
	(Restaurant & Compound Parking)	

C. **History:** Nuzback Restaurant and Bar is an established business that has operated at this location since 1948. Prior Permit 680664-U was issued on April 2, 1968 for the restaurant on Lots 1, 2, and 3 (now part of Lot 21). The parking compound comprises Lots 18, 19, and 20 and has been located in this location since 1957. The property was re-subdivided (MMB 233-66) on January 26, 2011, creating Lot 21.

D. **Request:** The applicant requests certification of a nonconforming use for a parking compound in the R-55 Zone. Because Zoning Regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began October 3, 1967.

E. **Surrounding Uses:** The surrounding area is developed with a mix of commercial, retail, and residential uses. There are no sidewalks and little on-site green space, or landscaping, in the area.

The site is surrounded by the following uses:

- North—** Properties improved with retail development zoned C-S-C.
- North—** Properties improved with retail development zoned C-S-C, undeveloped property zoned R-55, and Mulberry Street.
- East—** Properties improved with single-family residences zoned R-55.
- West—** Baltimore Avenue (US 1), and across Baltimore Avenue properties improved with retail development zoned C-S-C.

- 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:

Section 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 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 an application 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 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—In accordance with Section 27-244(f) of the Zoning Ordinance, the Planning Board must determine whether, in fact, the use was legally established prior to the date it became nonconforming and that it has been in continuous operation since that time. According to the applicant's documentation, Nuzback Restaurant and Bar has been in operation since 1948 and the adjacent lots have been used for parking since the inception of the business.

When the applicant applied for a use and occupancy (U&O) permit, the Permit Review staff did locate the original U&O permit; however, the permit did not include a parking compound as a permitted use of the subject property. Therefore, in accordance with Section 27-244(f), the Planning Board must determine whether, in fact, the use was legally established prior to the date it became nonconforming and that it has been in continuous operation since that time.

The applicant submitted the following documentary evidence in support of the application for the non-conforming use status of a parking compound:

1. Notarized affidavit of Richard Nuzback dated February 18, 2015.

2. Notarized affidavit of Terry Kitt, Mulberry Street property owner, dated February 18, 2015.
3. Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) Permit number 680664-U dated August 26, 1970 for 14000 Block Baltimore Avenue, Lots 1, 2, and 3, issued to Peter Nuzback for the operation of a restaurant and bar.
4. Deed dated December 23, 1948 conveying Lots 1, 2, 3, and 20, Block 4, to Peter Nuzback.
5. Deed dated April 2, 1961 conveying Lots 18 and 19, Block 4, to Peter and Kathryn Nuzback.
6. PG Atlas aerial photos from 1957, 1963, 1965, 1968 and 1980 and Google Earth photos from 1993 and 2002

DISCUSSION

The applicant has provided a Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) Permit, 680664-U, dated August 26, 1970 for 14000 Block Baltimore Avenue, Lots 1, 2, 3, issued to Peter Nuzback for the operation of a restaurant and bar. This evidence, combined with the aerial photos of the property from 1957, 1963, 1965, 1968, 1980, 1993, and 2002, clearly demonstrate the use of the rear portion of Lot 21 as a parking compound in conjunction with the operation of the restaurant and bar. The aerial photos specifically provide visual evidence that the subject property continued to be used for parking after the use became nonconforming in 1967. The other evidence, which consists of affidavits and property deeds further supports the existence of a parking use of the site at the subject property and supports the applicant's claim of continuous use.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the rear portion of the subject R-55-zoned property is currently used as a parking compound for an existing C-S-C-zoned use in accordance with the requirements of the Zoning Ordinance in effect prior to 1967. There is also no evidence to suggest a lapse of continuous use since that time.

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 APPROVED the above-noted application, subject to the following conditions:

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.

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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 Bailey, seconded by Commissioner Shoaff, with Commissioners Bailey, Shoaff, Washington, Geraldo and Hewlett voting in favor of the motion at its regular meeting held on Thursday, June 25, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 2nd day of July 2015.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator