

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

ERR-278

DECISION

Application:	Validation of Use and Occupancy Permit 40101-2013 for a Dry Cleaning/Laundry Service
Applicant:	KBIZ, Inc.
Opposition:	None
Hearing Dates:	June 12 and July 31, 2019
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval

NATURE OF PROCEEDINGS

(1) ERR-278 is a request for validation of Prince George's County's Use and Occupancy Permit 40101-2013-00, issued in error on March 4, 2014 for "dry cleaning/laundry" (Exhibit 7(d)), on approximately .6890 acres of land, located in the M-U-I (Mixed Use-Infill) Zone and in the Central Annapolis Development District Overlay Zone, on the northwest side of Annapolis Road approximately 320 feet south west of its intersection with Gallatin Street, also identified as 7450 Annapolis Road, Landover Hills, Maryland.

(2) No one appeared in opposition and the record was kept open for additional pictures of the signage posted which were received on July 31, 2019 and the record was closed on that date.

FINDINGS OF FACT

(1) The Applicant Dry Cleaning/Laundry occupies 5,000 square feet of a 12,500 square foot building built in 1965 which includes two separate additional uses. (Exhibit 21)

(2) BSK Cleaners, Inc. obtained Use and Occupancy Permit 40101-2013-00 for the subject property on March 4, 2014 for "dry cleaning/laundry". (Exhibit 7(d))

(3) KBIZ, Inc. entered into a contract to purchase of assets of BSK Cleaners, including the leasehold interest at the subject property, on May 18, 2018. (Exhibits 8 and 9)

(4) A dry cleaning business has occupied the subject property since at least 1999 when 1333-99-CU was approved for a "dry cleaning store/plant". (Exhibit 10)

(5) The Applicant obtained a commercial loan for \$422,500 to purchase the assets and leasehold interest of BSK Cleaners, Inc. (Exhibit 19)

(6) KBIZ, Inc. was issued a business license by the State of Maryland to operate a “CLN, DYE, Press Laundry” on the subject property, most recently from May 15, 2019-April 30, 2020. (Exhibit 20)

(7) KBIZ, Inc. applied for a new Use and Occupancy Permit as required for a name change/change in occupant, 11412-2019-U, which identified parking issues for the entire site, and has not been issued pending the resolution of the instant Application. (Exhibits 6 and 7)

(8) The Applicant testified that, to his knowledge, no fraud or misrepresentation was practiced in obtaining the 2013 Use and Occupancy Permit.

(9) The Board of Appeals was contacted on April 11, 2019 and no appeals have been filed for the subject property and there is no evidence to support a finding that there was any controversy regarding the issuance of the 2013 Use and Occupancy Permit. (Exhibit 1)

(10) KBIZ, Inc. has expended almost \$500,000 in reliance on the 2013 Use and Occupancy permit.

(11) The subject property has been developed with three commercial uses since 1965 (Exhibit 21) and has included a dry cleaner since at least 1999. (Exhibit 10) Therefore approval of the continued operation of a dry cleaner on the subject property would not be against the public interest.

LAW APPLICABLE

(1) A Use and Occupancy Permit may be validated as issued in error in accordance with §27-244 and §27-258 of the Zoning Ordinance.

(2) §27-244 states 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.

(f) **Planning Board review.**

(1) Required hearing.

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

(2) Application for certification.

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

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

(4) Planning Board action.

(A) The Planning Board may decide to either grant or deny certification of the use as nonconforming. If it decides to certify that a nonconforming use actually 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.

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

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

(5) District Council election to review; Appeal of Planning Board's recommendation.

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

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

(C) Before the District Council makes a decision on the application, it shall hold a public hearing.

(D) The Council may decide to affirm, reverse, or modify the recommendation of the Planning Board. The decision of the Council shall be based on the record made before the Planning Board. No new evidence shall be entered into the record of the case unless it is remanded to the Planning Board and a rehearing is ordered.

(g) **Applicability.**

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

(3) §27-258 states in pertinent part:

(a) **Authorization.**

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

* * * * *

(g) **Criteria for approval.**

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

- (A) No fraud or misrepresentation had been practiced in obtaining the permit;
- (B) If, at the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;
- (C) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and
- (D) The application meets the criteria of Section 27-244 of this Subtitle; and
- (E) The validation will not be against the public interest.

(h) **Status as a nonconforming use.**

(1) Any building, structure, or use for which a permit issued in error has been validated by the Council 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 non-conforming building or structure, or certified nonconforming use, shall be subject to all of the provisions of Division 6 of this Part.

CONCLUSIONS OF LAW

(1) As required by §27-244(b)(1), a Use and Occupancy Permit 11412-2019-U has been applied for. (Exhibit 7(a)) The property is not a nonconforming use; §27-244(b)(2)(A) & (B) is therefore not applicable. A site plan has been submitted (§27-244(b)(2)(C)). (Exhibit 10) There is a prior Use and Occupancy Permit (§27-244(b)(2)(D)). (Exhibit 7(d)) This not a request for an outdoor advertising sign (§27-244(b)(2)(C)). Written notice has been provided (§27-244(c)) and (Exhibit 11) the property has been posted for more than 30 days. (Exhibit 29)

(2) The instant Application is filed in accordance with §27-258 of the Zoning Ordinance. A dry cleaner has operated at the subject location since at least 1999 with all required County approvals. (Exhibits 7 and 10) No fraud or misrepresentation was practiced in obtaining Use and Occupancy Permit 40101-2013-00. §27-258(g)(1)(A) The County Board of Appeals found no appeals on the subject property and there is no evidence that a controversy existed over the issuance of 40101-2013-00. §27-258(g)(1)(B) The Applicant has acted in good faith, expending funds and incurring obligations in reliance on the 2013 Use and Occupancy Permit. (Exhibits 8, 9 and 19) §27-258(g)(1)(C) The validation would not be against public interest as the instant Application merely validates a use that has existed since at least 1999 in a commercial structure built in 1965. §27-258(g)(1)(E)

RECOMMENDATION

It is recommended that the District Council validate Use and Occupancy Permit 40101-2013-00 which will allow the issuance of Use and Occupancy Permit 11412-2019 in the Applicants name as required by law. The use as a dry cleaner/laundry shall be declared to be Certified Non-Conforming Use. The Site Plan is Exhibit 10.