

R E S O L U T I O N

WHEREAS, the Prince George=s County Planning Board has reviewed Certification of Nonconforming Use Application No. 28328-U-01 requesting certification of a two-family dwelling 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 6, 2002, the Prince George's County Planning Board finds:

- A. Location and Field Inspection: The subject property is located on the north side of Deanwood Drive, 150" feet east of Doewood Lane. The property is developed with a single residential building which has been converted into two separate living units.
- B. History: The subject property was placed in the R-55 Zone by the Comprehensive Map adoption in November 1949. The site was retained in the R-55 Zone by both the 1977 *Sectional Map Amendment (SMA) for the Model Neighborhood* as well as the 1993 *Sectional Map Amendment for Landover and Vicinity*.

On November 12, 1992, the Prince George=s County Planning Board certified this use as legally nonconforming by approving Certified Nonconforming Use Application No. 4777-92-U via PGCPB Resolution No. 92-282. Permit No. 4777-92-U was subsequently approved, but never issued. It was eventually abandoned in 1994 by the previous owners. Apparently the building sat vacant and unused for at least the time period from 1994 until July 2001, when it was purchased by the applicant. The units are now both occupied.

- C. Master Plan Recommendation: The 1993 *Master Plan for Landover and Vicinity* recommends a medium-suburban residential density (3.6-5.7 du/acre) for the subject property and the surrounding area.
- D. Request: The applicant seeks certification of the two-family dwelling in the R-55 Zone.
- E. Surrounding Uses: The subject property is surrounded by single-family residences and undeveloped land in the R-55 Zone.
- F. Certification Requirements: Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning 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 sets forth the specific requirements:

- 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) certifies that the use is really nonconforming and not an**

illegal use.

2. Application for Use and Occupancy Permit:

- a. The applicant shall file for a use and occupancy permit.**
- b. Along with the application and accompanying plans, the applicant shall provide the following:**
 - (1) 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.**
 - (2) 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 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.**
 - (3) Specific data showing:**
 - (I) The exact nature, size and location of the building, structure and use.**
 - (ii) A legal description of the property.**
 - (iii) The precise location and limits of the use on the property and within any building it occupies.**
 - (4) 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.**

G. Documentary Evidence: The applicant has submitted a statement explaining that he purchased the property under the impression that because the two-family dwelling had been certified in 1992, it was in full conformance with the Zoning Ordinance. He relies on the previous record from Application No. 4777-92-U to show legal establishment and continuity.

The applicant must show that the subject two-family dwelling has existed on the site since September 20, 1988, when CB-85-1988 rendered the use nonconforming. The applicant must

also show that said use has not ceased operation for more than 180 days between the time the use became nonconforming and the date this application was filed (October 15, 2001). We know that the two-family dwelling was once a permitted use, albeit by virtue of a misprint in the Zoning Ordinance which was in effect from July 1986 to September 1988, when it was corrected via CB-85-1988. The Planning Board has previously found this use to be legally established.

- H. The applicant freely admits that the two-family dwelling has not operated continuously without a break of more than 180 days. Apparently, the use sat vacant between the time that the previous owner abandoned the certification use and occupancy permit (1994) and the applicant purchased the property (2001). However, this period of nonoperation was clearly beyond the applicant=s control, and was indeed beyond the control of the previous owners. The previous owner of the two-family dwelling, which had existed in this neighborhood for more than 40 years, was unable to continue the use because of insufficient finances, illness and the death of a family member. The combination of these three unfortunate downturns led to an unintentional cessation of day-to-day use of the property. If not for these three factors, the property would have continued to function in the same well-operated manner that it had before 1994, and has been since the applicant took control. Thus, the conditions of nonoperation were beyond the control of the person who was in control of the property during the period of nonoperation.

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.

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.

* * * * *

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 Brown, seconded by Commissioner Lowe, with Commissioners Brown, Lowe and Hewlett voting in favor of the motion, and with Commissioner Eley absent and Commissioner Scott abstained at its regular meeting held on Thursday, June 6, 2002, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 27th day of June 2002.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:TL:rmk