

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. 35999-2002 requesting the certification of a nonconforming auto repair business 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 November 4, 2004 the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property is an irregularly shaped tract made up of Lots 1 and 4 and part of Lot 7 of the Little Washington subdivision, located east of Booker T. Drive and south of the proposed Douglas Street. The subdivision is west of Sansbury Road. The property is hilly, and except for the residence and two-bay garage structure, is fully utilized for the salvage of wrecked vehicles. It is surrounded by an eight-foot-high, metal, sight-tight fence. A portion of the fence is actually located outside of the lot lines and is proposed to be relocated, according to the site plan. Despite the sight-tight fence, wrecked vehicles and auto parts are visible from some locations within the surrounding neighborhood due to elevation differences on the site and surrounding area.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	R-R	R-R
Use(s)	Auto salvage, auto parts sales, auto repair	Auto salvage, auto parts sales, auto repair
Acreage	1.13	1.13

- C. **History:** The evidence in the record in this case indicates that the subject property was acquired by the applicants, John and Marie Fletcher, in 1952. The applicants' statement indicates that their business, Fletcher's Used Auto Parts, was established prior to the acquisition of the property. The property was incorporated into the Regional District and placed in the R-R Zone on April 24, 1961. In 1967, Use and Occupancy Permit No. 12112 was issued to "sell used parts," certifying the use as legally nonconforming. This action was upheld by the Board of Appeals, which issued a decision in July 1967, after finding that the use of the premises as a "junk yard" predated the 1961 comprehensive zoning. A permit was issued the same year for the construction of a six-foot tall fence around a "junk yard for cars."

In 1998 the applicant obtained a permit to construct a detached residential garage as an accessory to the residential use on the property. On May 2, 2000, a zoning violation was issued for the property citing, among others, the following violations: The enlargement/alteration of a nonconforming use by the construction of a service garage and the addition of motor vehicle repair without the approval of a special exception.

D. **Master Plan Recommendation:** The 1994 *Melwood-Westphalia Master Plan* recommends low-density residential uses for the subject property and immediately surrounding neighborhood to the east, west and south. Light industrial uses are recommended for land lying to the north of the subject property along the proposed Douglas Avenue.

E. **Request:** Certification of auto repair as a use which has predated the establishment of zoning authority and which has continued, uninterrupted, to the present time.

F. **Surrounding Uses:** The subject site is surrounded by the following uses:

North—Undeveloped land in the I-1 Zone

East, South and West—Single-family residences in the R-R Zone

G. **Certification Requirements:** The 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 non-operation 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.

There has been no use and occupancy permit issued for the auto repair use. Therefore, the Planning Board must determine whether, in fact, the use was legally established prior to the date it became nonconforming and has been in continuous operation since that time.

H. Documentary Evidence:

The uncontroverted testimony of area residents and clients at the Planning Board Meeting of November 4, 2004 provides sufficient demonstration that the subject property has been used continuously for both a vehicle repair facility as well as a vehicle salvage yard since at least 1961, meeting the requirements of Section 27-244 of the Zoning Ordinance.

The testimony provided at the meeting disclosed that Lot 7 has been used continuously since at least 1961 for access to this property and the businesses on this property

Testimony provided at the hearing shows that the opposition in this case is not based on evidence in the record, but reflects concern about the impacts of the business on the neighborhood.

The testimony provided at the hearing was in addition to affidavits from family members and business associates which are found in the record of this case. Furthermore, the applicant has provided the following documentary evidence in support of this application:

1. A deed of sale for Lot 4 to the applicants in 1952.
2. A 1961 letter from the Health Department to the applicant regarding the installation of a private septic system.
3. A WSSC Water Main Benefit Charge Notice issued for the subject property in 1964.
4. Various deeds relating to the acquisition of part of Lot 7.
5. Use and Occupancy Permit No. 12112-U, dated January 12, 1967, certifying the use of the property to “sell used parts.”

6. Decision of the Board of Zoning Appeals, Appeal No. 2191, dated July 21, 1967, sustaining the M-NCPPC certification by U&O Permit No. 12112-U as a “junk yard.”
7. Permit No. 22-74399-R issued in 1967 for the construction of a six-foot-high fence around a “junk yard for cars.”
8. A 1983 insurance premium renewal receipt referring to a “motor vehicle repair facility.”
9. Aerial photographs dated 1993, 1998, 2000.
10. Motor vehicle repair licenses, issued by the Department of Licenses and Permits, from 1982 through 2002.
11. Auto wrecker licenses and auto dismantler licenses from 1972 to the present.
12. Towing service licenses dating from 1980.
13. State of Maryland Traders licenses dating from 1967.
14. A 1997 State of Maryland Business License Application form, listing the type of business as “used auto parts.”

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 Squire, seconded by Commissioner Vaughns, with Commissioners Squire, Vaughns, Eley and Harley voting in favor of the motion, and with Commissioner Hewlett absent at its regular meeting held on Thursday, November 4, 2004, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 2nd day of December 2004.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:CW:rmk

(Revised 8/9/01)