

PGCPB No. 00-172

Permit No. CNU-9579-99U

Prince George's County Certification of Nonconforming Use Permit No. CNU-9579-99U

Applicant: Michael Herman, Owner

Location: Subject property is located on the south side of Oliver Street in the Town of Riverdale Park

Request: Certification of Nonconforming Use

R E S O L U T I O N

WHEREAS, on December 1, 1999, Michael Herman, filed an application for Certification of a Nonconforming Use for approximately 6,300 sq. ft. for a Certification of a Nonconforming two-family dwelling in the R-55 Zone; and

WHEREAS, the advertisement of the public hearing was posted on the property in accordance with Section 27-244(f)(4) of the Prince George's County Zoning Ordinance; and

WHEREAS, the application for Certification of a Nonconforming Use, also known as Case #CNU-9579-99U, was presented to the Prince George's County Planning Board by the staff of The Maryland-National Capital Park and Planning Commission on Thursday, September 21, 2000, for its review and action in accordance with Sections 27-244(a)(1) and (f)(1)(A) of the Prince George's County Code; and

WHEREAS, the Technical Staff Report released September 13, 2000 recommends Denial; and

WHEREAS, on September 21, 2000, the Prince George's County Planning Board considered the recommendation in the staff report and heard testimony from the staff and applicant.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Nonconforming Use No. CNU-9579-99U.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

- A. The property is located on the south side of Oliver Street in the Town of Riverdale Park. It is developed with a building originally constructed as a single-family dwelling that has been converted to a two-family dwelling. It is surrounded by single-family detached dwellings in the R-55 Zone.
- B. The property is shown in the R-55 Zone on the November 29, 1949, Zoning Map. It has remained in the R-55 Zone since.
- C. The property is found in Planning Area 68. The *1994 Approved Master Plan for*

Planning Area 68 recommends the property for single-family detached land use, in recognition of the area's long standing development pattern. The companion Sectional Map Amendment retained the R-55 designation.

- D. The applicant requests certification of a nonconforming two-family dwelling in the R-55 Zone. Two-family dwellings were permitted until September 20, 1988, when the Zoning Ordinance was amended prohibiting them in the R-55 Zone. The applicant must demonstrate that the use began prior to September 20, 1988, and that it has continued to exist with no break in operation of more than 180 days.
- E. 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.

F. The following evidence has been submitted by the applicant:

1. Affidavit of Ademola Oreagba, not notarized: Mr. Oreagba affirms that he purchased the property on May 28, 1998 and sold it on May 17, 1999. Mr. Oreagba affirms that he purchased the property to rehabilitate the Aexisting two-family@ and resell it. He states that he did major remodeling, but that, with the exception of adding a powder room, he did not Ado any structural work in either the larger portion of the house or the separate smaller apartment.@ He affirms that there were front and rear entrances to the smaller apartment when he acquired the property.
2. Affidavit of Karen L. Ritchie, notarized August 19, 1999: Ms. Ritchie affirms that she owned the property with her husband from 1981 to 1998 when it was sold to Mr. Oreagba. She affirms that she began dating Mr. Ritchie (deceased) in 1977, at which time he owned the property. At that time, she notes that the building was a two-family dwelling and that the separate apartment was leased and occupied. She affirms that Ait has been used as a separate apartment, with a separate entrance for more than 22 years.@
3. Affidavit of Paul F. Gleis, notarized July 25, 2000: This affidavit in support of the application is by far the most compelling. Mr. Gleis affirms that he was born in 1922 and lived from 1922 to 1946 at 4711 Oliver Street, two doors down from the subject property. He states that he moved out of the home in 1946 and moved back in 1972.

He remains a resident there today. Mr. Gleis= affidavit provides a list of most of the owners of the property beginning about 1940. He states that it was around 1940 that the home was converted to a two-family dwelling. He affirms that the property has been used continuously since then as a two-family dwelling. (Unfortunately, he also

affirms that the property may have been used as a boarding house during the time Mr. Ritchie owned it; apparently Mr. Ritchie leased Aindividual rooms in the main house. @ While having a roommate is not illegal, this description approaches a boarding house, which has never been allowed in the R-55 Zone.) In any event, Mr. Gleis provides persuasive evidence that the use as a two-family dwelling predates September 1988 and has been continuously operated as such.

4. PEPCO bills, dated June 2000: These electric bills show that from May 5 to June 6, 2000, there were two meters on the property.

G. Documentary Evidence in Opposition: The following evidence has been submitted by the Mayor of Riverdale Park.

1. Violation Notice, dated July 25, 1997, from Town of Riverdale Park Code Enforcement: The Violation Notice stated that the property was in violation of Chapter 68 of the Code of the Town of Riverdale Park. Tall grass, overgrown brush, a dead shrub and tree stump were present on the property.
2. Violation Notice, dated August 7, 1997, from the Town of Riverdale Park Code Enforcement: The Violation Notice reiterated the same violation.
3. Violation Notice, dated August 19, 1997, from the Town of Riverdale Park Code Enforcement: The Violation Notice reiterated the same violation.
4. Letter, Anderson to Ritchie, dated August 20, 1997: This was a handwritten letter from the Town Code Enforcement Office to the property owner. This letter informed the owner that if action was not taken to correct the violations, the Town would clean up the property and charge the property owner.
5. Violation Notice, dated May 14, 1998, from the Town of Riverdale Park Code Enforcement: This was another violation notice regarding tall grass and weeds. This notice was addressed to Wendover Funding, Inc.
6. Photograph, dated May 14, 1998: This photograph shows a number of notices posted in the window. However, it is not possible to read the notices or to determine if they are, in fact, notices at all.

H. Discussion: Nonconforming use applications are often difficult because the burden, so squarely laid at the applicant=s feet, is generally onerous. Business records rarely reach back as far as required, and affidavits must be used to fill in gaps in missing data. In this case, the applicant has supplied the record with two PEPCO bills form July 2000. The applicant testified that there data and the affidavits represent the total data available to him.

The applicant provided an additional affidavit at the hearing from Nicole J. Burton, who noted that the second apartment had been occupied during the dates the violation notices

were issued. The Planning Board also heard testimony from a neighbor familiar with the property, who testified that the structure on the property had always been known as a two-family dwelling and that only recently was its status ever questioned.

Based on the testimony presented in the record and at the hearing, the Planning Board finds that a preponderance of evidence that the structure has been used as a two-family dwelling since prior to September 20, 1988. In fact, it has been a two-family dwelling for approximately 60 years. The Planning Board finds that there is little evidence that implies that there were breaks in this use for more than 180 consecutive days. However, it is undisputed that the Astructure@ has had two dwellings since 1940. The only question is whether it has been occupied. With regard to occupancy, the Planning Board finds that market conditions which may have prevented occupancy are beyond the owner=s control and that it is reasonable to expect some period of vacancy.

The applicant has met his burden of demonstrating to the satisfaction of the Planning Board that the use is eligible for certification and that the application satisfies the requirements of Section 27-244 of the Zoning Ordinance for approval.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board=s action must be filed with the District Council of Prince George=s County within thirty (30) days following 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 Eley, with Commissioners Eley, Brown and Hewlett voting in favor of the motion, with Commissioner Lowe absent, at its regular meeting held on Thursday, September 21, 2000, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 19th day of October 2000.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:jd:leb