

PGCPB No. 00-95

Permit No. NCU-6626-99-U

Prince George's County Certification of Nonconforming Use Permit No. 6626-99-U

Applicant: Edward Brady, Owner

Location: North side of Annapolis Road, 600 feet west of Buchanan Street

Request: Certification for an Automobile Repair Service

R E S O L U T I O N

WHEREAS, on March 10, 2000, Edward Brady, filed an application for Certification of a Nonconforming Use for approximately 2.06 $\frac{1}{2}$ acres for a certification for an Automobile Repair Service that became nonconforming with the adoption of the 1994 Master Plan and Sectional Map Amendment for Bladensburg-New Carrollton and Vicinity (Planning Area 69) in the R-20 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 #NCU-6626-99-U, was presented to the Prince George's County Planning Board by the staff of The Maryland-National Capital Park and Planning Commission on Thursday, May 25, 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 May 17, 2000 recommends APPROVAL; and

WHEREAS, on May 25, 2000, having considered the recommendation in the staff report and heard testimony from the staff and applicant, the Town of Landover Hills and the representative of the adjoining property to the north, the Prince George's County Planning Board disagreed with the staff analysis and recommended DENIAL.

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 DISAPPROVED Nonconforming Use No. NCU-6626-99-U.

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

- A. Location and Field Inspection: The property is located on the north side of Annapolis Road (MD 450) Between Buchanan Street (northeast) and 68th Avenue (southwest). It comprises approximately .49 acre of land and has approximately 225 feet of frontages on Annapolis Road . There is no permanent building on the property. However, two large trailers are parked on the northeastern portion of the property. It is enclosed with a six-foot-high opaque fence. It abuts unimproved, wooded parcels of land to the east in the R-20 Zone and to the west in the R-55 Zone. The Prince George's County Cranford Graves Fire Service Building is located adjacent the subject property to the north (rear), also in the R-55 Zone.

- B. History: The property was rezoned from C-O to C-M in 1985 (A-9501). With the adoption of the *1994 Sectional Map Amendment for Bladensburg-New Carrollton and Vicinity*, the zoning was changed from C-M to R-20
- C. Master Plan Recommendation: The *1994 Bladensburg-New Carrollton and Vicinity Master Plan* recommends the site for medium-suburban one-family triple-attached residential use with R-20 zoning and with a maximum density of 16.33 dwelling units per acre.
- D. Request: The applicant requests certification for an Automobile Repair Service that became nonconforming with the adoption of the 1994 Master Plan and Sectional Map Amendment for Bladensburg-New Carrollton and Vicinity (Planning Area 69).
- E. Surrounding Uses: The immediate area surrounding the property is characterized by residential developments in R-55 Zone to the north east and west of the subject property. The subject property and the adjoining property to the east are zoned R-20. Commercial uses in the C-S-C and C-M Zones are located directly across Annapolis Road and farther along the highway to the southwest.
- 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 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.**

This property was initially posted for administrative certification in accordance with Section 27-244(d)(1). However, the Town of Landover Hills filed a request dated April 3, 2000, for a public hearing by the Planning Board in accordance with Section 27-244(f)(1)(A).

Records related to the subject property indicate that the zoning of the subject site has been changed from C-O to C-M on February 25, 1985 (Zoning Ordinance No. 9-1985). The applicant purchased the property in 1989 with the intention to use the property for an automobile repair and service facility. On April 22, 1994, the applicant obtained a use and occupancy permit (1119-94-CGU 01) for auto repair, towing and auto sales. In May 1994, the Prince George's County Council approved the Master Plan and the Sectional Map Amendment for Bladensburg-New Carrollton and Vicinity (CR-53-1994). As a result, the zoning of the property was changed from C-M to R-20, and the automobile repair, towing and sales business became nonconforming. The business is not permitted in the R-20 Zone.

The applicant contends that the business has been in operation continuously since April of 1994 and has provided supporting documents as evidence. In the current application (NCU-6626-99-U), the applicant is requesting certification for only the automobile repair service and does not include towing and sales.

A site inspection revealed two medium-size trailers on wheels which appear to be used for storage. The trailers are not part of the nonconforming use, not shown on the site plan and are not permitted in either the C-M or the R-20 Zone. Therefore, they must be removed. The property is wholly enclosed (with the exception of a small opening on its northeast corner at the rear) with a six-foot-high opaque fence (corrugated iron and board-on-board). The fence is a condition attached to Permit No. 1119-94-CGU 01.

G. Documentary Evidence: The applicant has submitted the following documentation, which establishes the existence and continuous use of the automobile repair service on the subject property since prior to the enactment of CR-53-1994 on May 17, 1994:

1. An affidavit of Mr William J. Brady, a long-time customer of the automobile repair business attesting to his personal knowledge that the business operated at that location since 1994. Furthermore, that he brought his cars for service regularly since that time. Also, several payment invoices for services performed at the automobile repair service for Mr. Brady are submitted into the record. The invoices contain payment dates ranging from June 1994 to March 2000.
2. Copy of a building permit application for construction of new six-foot fence and foundation for automobile repair service, dated February 28, 1994.
3. Copy of approved Permit No. 1119-94-CGU-01 (April 22, 1994) for automobile repair, towing and used car sales.
4. Copies of comments on proposed zoning changes (with references to the subject property) in the proposed master plan (later approved in May 1994).
5. At the hearing, the applicant has provided additional evidence, a notarized statement from Mrs. Barbara Taubersmith. The statement states that she brought her cars to the subject location for oil change service on regular basis (every three to five months or 3,000 to 5, 000 miles) since 1994.

Although, the documentary evidence demonstrates the existence of an automobile repair service establishment on the subject property since prior to May 17, 1994, it is incomplete. The evidence provided by the applicant does not demonstrate continuity of use as required by Section 27-244(b)(2). Therefore, the Planning Board concluded that the subject use is not eligible for certification as a nonconforming use.

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.

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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 McNeill, seconded by Commissioner Boone, with Commissioners McNeill, Boone and Hewlett voting in favor of the motion, and with Commissioner Brown absent, at its regular meeting held on Thursday, May 25, 2000, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 22nd day of June 2000.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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