

PGCPB No. 00-125

Permit No. NCU-7027-99U

Prince George's County Certification of Nonconforming Use Permit No. 7027-99U

Applicant: Jose Antonio and Elsi Vega, Owners

Location: East side of Wells Avenue, 350 feet southeast of Perry Street.

Request: Certification of Nonconforming Use for an Auto Repair

### R E S O L U T I O N

WHEREAS, on January 5, 2000, Jose Antonio and Elsi Vega filed an application for Certification of a Nonconforming Use for approximately .11± acre for an Automobile Repair Service with Outdoor Storage in the R-55 Zone; and

WHEREAS, the Technical Staff Report of June 21, 2000 recommends approval; and

WHEREAS, on June 26, 2000, the City of Mount Rainier submitted a Motion to Dismiss Nonconforming Use Application No. 7027-99U to the Planning Board citing a Circuit Court Order (CAL. 98-12962) that the City believes precludes the Planning Board's review of the subject application; and

WHEREAS, a subsequent review of the case by the Planning Board's Associate General Counsel found that the pending Court Order for this case precludes the Planning Board's review; and

WHEREAS, a memorandum from staff dated June 28, 2000 discussed the pending Court Order and revised the staff recommendation to DENIAL; and

WHEREAS, on June 29, 2000 the Prince George's County Planning Board heard testimony from staff, Counsel for the City of Mount Rainier and the applicant regarding the pending Court Order and determined that, based on Court Order CAL 98-12962, the Board is prohibited from hearing this case and adopted staff's revised recommendation of 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 DENIED Nonconforming Use No. 7027-99U.

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

1. The applicant requests certification of an automobile repair shop with outdoor storage in the R-55 Zone. The applicant states that the auto repair business has existed at this location since 1960 and has operated continuously since that time. The subject property is located on the east side of Wells Avenue, 350 feet southeast of Perry Street. This case was originally heard as NCU-4811-96U and approved by the Planning Board on November 7, 1996 (refer to Attachment #1). The complete chronology of events is as follows:

TIMELINE for NCU-4811-96-U

07-16-58	Lot 23 re-zoned from R-55 to I-1 per A-3166
1960	Repair shop opened -- part-time operation (Permit #3715-U issued 02-08-60)
1982	SMA for PA 68 adopted by District Council and I-1 Zone retained
06-23-89	U&O issued to David Van Daalen
1992	CB-30-1992 became effective: required all auto repair facilities to be screened from abutting property which is residentially zoned
05-17-94	Zoning on Lot 23 changed from I-1 back to R-55 (Master Plan and SMA approved)
12-19-94	Mr. Vega purchased Lots 22 & 23 from David Van Daalen
10-19-95	Permit #8425-95-CGU put on hold by M-NCPPC; was applied for to validate new construction of shed roof over storage area
07-10-96	Mr. Vega filed application for NCU
07-12-96	AC #96042 approved in conjunction with U&O permit #1980-96-U
10-04-96	Signs posted for public hearing for NCU
10-30-96	Public release of initial staff report for NCU- 4811-96-U
11-07-96	Planning Board hearing
12-05-96	Planning Board Resolution No. 96-332 adopted, approving the certification
04-28-97	District Council remanded NCU-4811-96-U back to the Planning Board
10-09-97	Planning Board hearing to address remand

11-06-97	Planning Board Resolution No. 97-293 (attached) adopted, approving the certification with conditions
12-10-97	City of Mt. Ranier appealed the Planning Board's decision to District Council
06-23-98	District Council issued an order reversing the Planning Board's decision (attached)
02-03-99	Applicant appealed District Council's decision to the Circuit Court and the Court affirmed the Council's decision to deny the application
01-05-00	Applicant files a new request to certify a less-intense version of the subject use

2. The applicants' most recent application (NCU-7027-99U) indicates that the use now operates on Lot 23 as originally established in 1960. In addition, the illegal shed has been removed and the applicant further submits that no outdoor storage will occur, the carport on Lot 22 will no longer be used in conjunction with the auto repair facility, and Wells Ave. will not be used for parking or storage of vehicles.
3. The City of Mount Rainier submitted a Motion to Dismiss the subject application citing Prince George's County Circuit Court Order CAL. 98-12962. This Court Order affirms the District Council's decision of June 8, 1998 which denies the applicants' request for an auto repair use under Nonconforming Use Application NCU-4811-96U. The City submits that the doctrine of res judicata prevents the Planning Board from reviewing the new application (NCU-7027-99U) which applies to the same use on the same property
4. The Technical Staff's comments of June 21, 2000 do not consider the effect of the Court Order on the subject application.
5. The Associate General Counsel for the Planning Board opines that the only remedy for the applicant to change the effect of the Court Order is through the judicial system. It is not possible for the applicant to obtain relief from the Court Order by filing this second application for the same use on the same property. The Planning Board has no choice but to recommend Denial of the new application.

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 Brown, seconded by Commissioner McNeill, with Commissioners Brown, McNeill, Boone and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, June 29, 2000, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 27<sup>th</sup> day of July 2000.

Trudye Morgan Johnson  
Executive Director

By Frances J. Guertin  
Planning Board Administrator

TMJ:FJG:JJ:ldg