

PGCPB No. 01-14

Permit No. NCU-7109-99-U

Prince George's County Certification of Nonconforming Use Permit No. 7109-99-U

Applicant: Thomas & Lisa Austin, 17210 Manning Road East, Accokeek, MD 20607

Location: 17210 Manning Road East, Accokeek, MD 20607

Request: Nonconforming use certification for a trash removal service in the R-R and R-A zones

R E S O L U T I O N

WHEREAS, on January 11, 2001, Thomas and Lisa Austin filed an application for Certification of a Nonconforming Use for approximately 7,081.27 square feet for a trash removal service in the R-R and R-A zones; 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 #7109-99-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, January 11, 2001, 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 15, 2000, recommends Disapproval; and;

WHEREAS, on January 11, 2001, having considered the recommendation in the staff report and heard testimony from the staff and applicant, the Prince George's County Planning Board disagreed with the staff analysis and recommendation and adopted its own.

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. 7109-99-U.

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

1. Location and Field Inspection: The property is known as 17210 Manning Road East in Accokeek. The property is located in the southeast quadrant of the intersection of Manning Drive and Manning Road East, 400 feet south of Clinton Drive. The property is comprised of three acreage parcels. Parcel 3, Parcel 61, and Parcel 74, totaling 15.22 acres. The property has 509.12 linear feet of frontage along Manning Road East. It is improved with a single-family dwelling, barn, storage building and two sheds. Access to the property is via two driveways from Manning Road East, one along the west property line, the other along the east property line.

2. History: The property was placed in the R-R Zone on April 24, 1961, when it was annexed into the Washington Regional District. At that time, a trash removal service was not a permitted use in the R-R Zone. On December 4, 1979, by Sectional Map Amendment a portion of the subject property was rezoned to the R-A Zone, and the R-R Zone was retained on the remainder. A trash removal service was not permitted at that time in either the R-R or R-A Zone. On September 14, 1993, the current Approved and Adopted Section Map Amendment for Subregion V retained the subject property in the R-A and R-R Zones, where a trash removal service is not a permitted use.
3. Master Plan Recommendation: The 1993 Approved Master Plan and Sectional Map Amendment for Subregion V recommends this area as a large lot/alternative low density development area.
4. Request: The applicant is requesting certification of a trash removal service that includes an equipment storage shed, barn and a concrete block shed, all totaling 7,081.27 square feet. Two outdoor truck storage areas totaling 10,205 square feet are also included. The access is via two separate 12-foot-wide access driveways from Manning Road East, which also serve the existing single-family dwelling on site.
5. Surrounding Uses: A 50-foot-wide ingress egress easement partially located on the subject site, runs along the west property line. West is residentially-zoned land, generally undeveloped. Southwest are two single-family dwelling units and an automotive storage yard. South and east is vacant residentially-zoned land. North across Manning Road East is vacant residentially-zoned land. A 110-foot PEPCO right-of-way traverses the subject property in the northwest corner.
6. 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.**

7. Documentary Evidence: The applicant has submitted the following documentation to establish the existence of a trash removal service and its continuous operation since April 24, 1961:
- A. Notarized statement (Charles Hess), dated December 1999: Mr Hess states that he has contracted with Richards Trash Service, a.k.a., Austin Trash Removal Service since 1980, to pick up and remove trash. He attests that to the best of his knowledge the trash removal service has been located at 17210 Manning Road in Accokeek.
 - B. Notarized statement (H. Manning Claggett), dated January 6, 2000: Mr. Claggett states that he has contracted with Richards Trash Service, a.k.a., Austin Trash Removal Service since 1955, to pick up and remove trash. He attests that to the best of his knowledge the trash removal service has been located at 17210 Manning Road in Accokeek.
 - C. Notarized statement (Lillian Matise), dated January 6, 2000: Ms. Matise states that she has been serviced by Richards Trash Service, a.k.a., Austin Trash Removal Service since 1948 to the present, and ■knows■ that the business had been located at 17210 Manning Road since her service began.

- D. Notarized statement (Clyde C. Sowell), dated December 1999: Mr. Sowell states that he knows that Richards Trash Service, a.k.a., Austin Trash Removal Service has operated their business from 17210 Manning Road since 1960.
- E. Consolidated Tax Bill for July 1, 1998 to June 30, 1999. It states that property on Manning Road, land account number 034491-1 owned by Lisa and Thomas Austin is not a principal residence.
- F. Pictures A through Q of the structures located at 17210 Manning Road, no date provided.
- G. Statement under oath of Thomas Austin dated February 18, 1999: He attests that he has been associated with the property since 1995 when he bought it from his father-in-law, James Carlyle. At that time he started working for this father-in-law's trash removal service on the subject site. He states that the existing trash removal business contracts with Prince George's County.
- H. Statement under oath of Dennis McLatchy dated February 18, 1999: He attests that he purchased the property in 1976, and he has used it for bus/vehicle maintenance, cabinet shop and warehouse uses. He states that he began leasing to Thomas Austin in 1995, for the use of trash removal service. He bought the property because he had a charter bus service and needed a place to work on the buses.
- I. Statement under oath of Joseph Clyde Richards dated February 18, 1999: Mr. Richards attests that his parents owned the property prior to 1948. The subject portion of the property was then sold to Mr. O'Brien and used for storage and repair of his own vehicles. In 1958, the property was sold to Hank Scoggins. The property was used for an excavating business and repair shop. Buddy Swift then purchased the property from 1969 to 1972 and also used it for an excavating business. Leroy Richards then purchased the property and also used it for an excavating business and vehicle storage. He indicates that his father had a trash business. Mr. McLatchy purchased the property in 1975, operated a repair shop for mainly buses and noted that trash trucks were parked on the property. He states that the property has been continuously used since 1953; there has always been a business operated out of this property.
- J. Statement under oath of Wayne Newman dated February 18, 1999: He attests that he has lived across the street from the subject property since 1974. He states that he is familiar with the property being used as a repair shop and storage area since 1967. He also states that a trash removal business has been operating on the property since 1967.
- K. Statement under oath of James Richards dated February 18, 1999: He attests that his father Clinton Richards purchased the property in 1947 and divided the property. To his knowledge the subject property was used for storage, auto repair, landscaping business, excavating business and storage. He states that in 1969, the owner allowed his father to park trash trucks inside the storage building. He states that they use to park trash trucks around there (the barn)

once in a while,... letting them stay overnight so the wind wouldn't blow the trash out. He states that Richards Trash Removal rented the barn from 1995 to 1997.

- L. Unrecorded addendum to the foreclosure contract for the subject site, dated November 14, 1996. It states that the contract of sale is for a commercial property, notwithstanding language to the contrary appearing in the original Residential Contract of Sale dated October 18, 1996, for the subject property.
 - M. The Enquirer Gazette (1996) notice of foreclosure for the subject property. It states the property contains several sheds, a horse barn and a dwelling.
 - N. Deed of sale dated January 1, 1997 between Faust and Austin.
8. Accokeek was annexed into the Regional District on April 24, 1961. At the time of annexation, a trash removal service was prohibited in the R-R and R-A Zones. Therefore, the applicant must demonstrate that the use began prior to April 24, 1961. There is evidence in the file to establish that this property has been used in a commercial manner since the annexation date.

The applicant had submitted four notarized statements, two indicating specific knowledge that the trash service has been located at 17210 Manning Road East, and one indicating prior to 1961. The five statements made under oath provide information as to the use of the property. Common to all is that a commercial use has existed on this property predating 1961. It appears that from time to time since 1961, trucks were repaired on site, to include trash trucks. Storage of vehicles and trucks, to include trash trucks has also occurred on this site.

At the January 11, 2001, Planning Board hearing, additional testimony over that originally provided was presented. Mr. James Carlyle Richards, a long time resident of Accokeek and a highly respected member of the community testified to the fact of personnel knowledge of a trash removal service on the property. Mr. Clyde Richards also a long time residence of the area testified to the fact of personnel knowledge of a trash removal service on the property.

Testimony was provided that established that the trash removal business on this property was one of many business on the property. Due to the small size of the operation written records were not therefore readily available. Based on the evidence and testimony provided by highly respected citizens of the community the Planning Board finds that the business of a trash removal service was established prior to April 24, 1961 and has been in continuous operation at 17210 Manning Road East to the present. We therefore recommend APPROVAL of NCU 7109-99-U.

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 Eley, with Commissioners Brown, Eley, Lowe and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, January 11, 2001, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 15th day of February 2001.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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