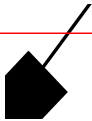


Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530



Comment [COMMENT1]: WHEN INSERTING
INFORMATION AT THE @ SIGN
REMEMBER TO USE INDENT FOR SECOND
LINE - NOT TAB. ALSO, IT WILL LOOK
LIKE THE TEXT IS GOING WACKO, BUT
DON'T WORRY - IT IS FINE.

CERTIFICATION OF A NONCONFORMING USE

CNU-13017-2001

Application	General Data	
Project Name Bregman Property	Date Accepted	8/27/01
	Planning Board Action Limit	N/A
	Tax Map & Grid	049 E-1
Location North side of Chillum Road approximately 500 feet west of Queens Chapel Road., known as 2440	Plan Acreage	0.86 Acres
	Zone	C-S-C
	Dwelling Units	N/A
Applicant Morris J. Bregman 2325 Nees Lane Colesville, Maryland 20905	Square Footage	N/A
	Planning Area	68
	Council District	02
	Municipality	N/A
	200-Scale Base Map	207NE2

Purpose of Application	Notice Dates	
CNU-13017-2001-U - Auto sales, repair and storage/towing service	Adjoining Property Owners (CB-15-1998)	8/30/01
	Previous Parties of Record (CB-13-1997)	N/A
	Sign(s) Posted on Site	3/8/02
	Variance(s): Adjoining Property Owners	N/A
Staff Recommendation		Staff Reviewer: Catherine H. Wallace
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL
In Part		In part

April 3, 2002

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Catherine H. Wallace, Planner Coordinator

SUBJECT: **Certified Nonconforming Use Application No. 13017-2001-U**

REQUEST: **Certification of a nonconforming auto sales and repair facility including storage and towing service**

RECOMMENDATION: **APPROVAL of the auto repair, storage and towing uses;
DENIAL of the auto sales use**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated above. The Planning Board also encourages all interested persons to request to become a person of record in this application. Requests to become a person of record should be made in writing and addressed to the Development Review Division at the address indicated above. Please call 301-952-3530 for additional information.

FINDINGS:

- A. Location and Field Inspection: The subject property is a rectangular parcel that is .8 acre in size, located on the north side of Chillum Road, approximately 500 feet west of Queens Chapel Road. It is developed with a small auto repair business and towing service. A sign on the property identifies it as Buttrey's Auto, Inc., Parts and Repairs, 779-7886. The site is developed with a small office and a small garage. The balance of the site is used for the storage of automobiles apparently awaiting repair. One vehicle parked in front of the fence adjacent to the Henderson Automotive Business carried a "For Sale" sign on or inside its windshield. No other vehicles appeared to be for sale on the property.
- B. History: The subject property was rezoned from the C-M Zone to the O-S Zone on July 14, 1992, by the *West Hyattsville Transit District Development Plan*. This zoning was left in place by the 1994 *Planning Area 68 Master Plan and Sectional Map Amendment* which incorporated the zoning decisions of two transit district development plans into the Master Plan. An amendment to the *West Hyattsville Transit District Development Plan* (TDDP) was approved on June 23, 1998, at which time the subject site and adjacent properties were placed in the C-S-C Zone.
- C. Master Plan Recommendation: The 1994 *Planning Area 68 Master Plan and Sectional Map Amendment* incorporated the recommendations of the *West Hyattsville Transit District Development Plan*, which were, in turn, revised by the 1998 *West Hyattsville Transit District Development Plan*. The subject site is located in Subarea 8 of the 1998 TDDP. None of the uses requested for certification is permitted, except that nonconforming uses may be continued.
- D. Request: The owner and applicant requests certification of the following uses: auto sales, auto repair, auto towing and storage.
- E. Surrounding Uses: The subject property is surrounded by the following uses:
- North - Northwest Branch
- East - Henderson Tire and Auto Center and Henderson Automotive, Queenstown Car Wash, a small retail center, and an Exxon gas station, all in the C-S-C Zone
- South - Across Chillum Road there is a shopping center containing a Shoppers Food Warehouse and a U-Haul self-storage center, in the C-S-C and C-M Zones
- West - Queenstown Auto Electric Service, in the C-S-C Zone
- 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 nonoperation 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.**

The applicant submits that the property has been leased to its current occupant, Buttrey's Auto, Inc., since May 23, 1984, and that the property has been used continuously since that time for an auto sales, auto repair, towing ,and storage business. The owner is currently in the process of selling the property.

The tenant, Mr. G.N. Buttrey, indicates in a letter to staff that although the property has been used for auto repair, towing and storage, it has not been used for auto sales.

G. Documentary Evidence:

The applicant has submitted the following:

1. A copy of Use and Occupancy Permit No. 394-83U, which states that the use of the property was for ■auto and other motor vehicle repair, used car sales, and auto parts/retail.●
2. A copy of Use and Occupancy Permit No. 2937-84-CU, approved for the construction of a six-foot-high fence, and listing the existing use as ■auto repair service● and the proposed use as ■auto towing station.●
3. A letter from James Henderson of Henderson Automotive, the business which adjoins the subject property to the east, dated June 20, 2001. Mr. Henderson states that he has been doing business at the adjoining location for 30 years and that he has observed the subject site being used continuously as an auto repair garage, an auto sales lot and a towing yard since prior to 1992 (the year the uses became nonconforming).

Mr. G.N. Buttrey, the tenant of the property, submitted a letter to Mary Hampton, of the Permit Review Section, on September 19, 2001. In that letter, Mr. Buttrey states that his business has occupied the property since 1983 and that Buttrey's Auto operates as an automotive repair facility. He indicates that although the Use and Occupancy permit allows the property to be used for auto sales, he has never obtained a business license for auto sales. He states that his business has not used the property for the sale of new or used automobiles.

CONCLUSION:

As noted in the May 30, 2001, memorandum from Mary Hampton, documentation must be provided for each of the individual uses listed on the permit and nonconforming use application form just prior to July 1992 until the present demonstrating that the uses have not ceased operation for more than 180 consecutive calendar days. Since this documentation has not been presented, the case must be decided by the Planning Board.

Typically, the applicant in a nonconforming use request submits business records and other evidence of continuous use. In this case, those records may be difficult for the applicant and property owner to obtain. However, the letters from the long-standing tenant and the next-door businessman, as well as the field inspection of the property, confirm the fact that an auto repair, towing and storage business has been conducted on the site continuously since prior to the date in 1992 when these uses became nonconforming. The case for automobile sales is less clear. The signs on the property do not contain information about auto sales, nor were sales display areas indicated on the site. Absent the submission of business documents, the Planning Board is forced to rely upon the testimony of individuals knowledgeable about the history. Unfortunately, that testimony is inconsistent and therefore, unconvincing.

Based upon the information in the record and the staff field inspection, it is recommended that the Planning Board APPROVE CNU-13017-2001-U for an auto repair, towing and auto storage business. It is further recommended that the Planning Board DENY the request for the auto sales use.