



## CERTIFICATION OF NONCONFORMING USE 17347-2001-U

Application	General Data
<b>Project Name:</b> Duran  <b>Location:</b> South side of Madison Street approximately 200 feet east of 31 <sup>st</sup> Avenue, known as 3105 Madison Street.  <b>Applicant/Address:</b> Ernest Duran 10501 Sweetbriar Parkway Silver Spring, Maryland 20903  <b>Correspondent</b> Ernest Duran 10501 Sweetbriar Parkway Silver Spring, Maryland 20903	Date Accepted 7/27/01
	Planning Board Action Limit N/A
	Tax Map & Grid 041 E-3
	Plan Acreage .1302 Acre
	Zone R-55
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 68
	Council District 02
	Municipality Hyattsville
	200-Scale Base Map 207NE3

Purpose of Application	Notice Dates
Certification of a nonconforming use for a two-family dwelling in the R-55 Zone.	Adjoining Property Owners (CB-15-1998) N/A
	Previous Parties of Record (CB-13-1997) N/A
	Sign(s) Posted on Site 01/04
	Variance(s): Adjoining Property Owners N/A

Staff Recommendation			Staff Reviewer: Elsabett Tesfaye
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

January 30, 2002

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner

SUBJECT: **Certified Nonconforming Use Application No. 17347-2001-U**

REQUEST: **Certification of a Two-Family Dwelling in the R-55 Zone.**

RECOMMENDATION: **Denial**

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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.

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## FINDINGS:

- A. Location and Field Inspection: The subject property is located on the south side of Madison Street approximately 200 feet east of 31<sup>st</sup> Avenue, known as 3105 Madison Street. It comprises approximately .13 acre of land and is improved with a one-story (plus basement) frame dwelling. The property has approximately 48 feet of frontage on Madison Street from which it is accessed.
- B. History: The 1994 Sectional Map Amendment for Planning Area 68 retained the property as R-55 zoning.
- C. Master Plan Recommendation: The 1994 Approved Master Plan for Planning Area 68 recommends the property for single-family residential development at high density (single-family detached homes on lots of 6,500 square feet at an average of 6.70 dwellings per acre).
- D. Request: The applicant requests certification of a two-family dwelling in the R-55 Zone. The R-55 Zone permits only one, one-family detached dwelling on a lot.
- E. Surrounding Uses: The immediate area surrounding the property is characterized by residential developments in the R-55 and R-35 Zones. The subject property and the adjoining properties to the north, south and west are zoned R-55. Residential uses in the R-35 Zone are located about three blocks northeast of the site.
- 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 asserts that his company, Duran Duran, Inc., purchased the subject property in November 2000 as a two-family dwelling and is intending to continue renting the property as such. The applicant has further stated that contractors, at the request of Duran Duran, Inc., have inspected the house and determined that it was divided into two units before 1986.

The applicant's request is based on the fact that, because of an error, the Zoning Ordinance allowed a two-family dwelling unit in the R-55 Zone from July 29, 1986 thru September 20, 1988. The applicant maintains that the use existed during that time and has been in continuous operation until today.

A site inspection reveals a one-story, frame residential dwelling with a basement and a concrete driveway. The property is identified as 3105 Madison Street. There is no visible evidence in the exterior appearance of the subject structure to indicate that the house is being used as a two-family dwelling.

- G. Documentary Evidence: The applicant has provided two letters, from an adjoining property owner and a contractor, as supporting evidence for the use of the subject structure as a two-family dwelling (see attachment). However, neither letter establishes or confirms that the subject structure has been used as a two-family dwelling continuously since prior to the original zoning (1949) or during the period between July 7, 1986 and September 20, 1988.

The letter from the adjoining neighbor, Dendry Aguilar (3108 Lancer Place), simply acknowledges that people currently reside in the basement of the subject property. The second letter, which is signed by Michael Dean, President of Dean Construction, Inc., lists Mr. Dean's observations after touring the basement apartment at the request of the applicant:

- The apartment has recently been renovated, new flooring and paint. There are some new light fixtures and trim.

- There is no existing stairway to the upper house and I could not determine how long ago that it was removed or if it had been built that way by the builder.

- Most of the wiring seems to be 20 plus years old.

- Some of the plumbing fixtures are dated in the 1960's.

- It will only be a guess, but it looks like the apartment was existing in the late 60s or early 70s and has had several cosmetic renovations since, the most recent having occurred within the last year.●

The applicant indicated that he is unable to provide additional supporting evidence. Although the evidence provided is consistent (with each other), it is not compelling.

In addition, the record includes a copy of a letter forwarded from the City of Hyattsville that further weakens the applicant's claim. The letter (see attachment), which is written by Mr. Michael P. Grimes, the previous owner of the property, states that the subject property had been under the ownership of the Grimes family from April 8, 1954, until its sale on December 7, 2000. The letter indicates that the property has never been used as a two-family dwelling while under the ownership of the Grimes family, nor that it was used as a rental property during that time.

Mr. Grimes's letter describes the livable area as being limited to the first floor of the house and indicates that the attic and the basement had remained unfinished until the house was sold in December 2000. According to the letter, the only remodeling done on the house was the addition of a door to the basement to facilitate access from the laundry area to the backyard. The letter also indicates that the house was sold to the current owner as is.●

Staff has repeatedly informed the applicant of the need to supplement the evidence in this case in time for the Planning Board's scheduled public hearing. It was suggested that the applicant produce 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. Or, if that is not possible, to submit sworn statements from former tenants, former owners or area residents who can attest to the continuity of the use since prior to 1949 or during the period between July 7, 1986 and September 20, 1988.

## **CONCLUSION:**

The documentary evidence provided by the applicant is insufficient. Furthermore, the contradictory evidence provided by the previous owner via the City of Hyattsville places additional burden upon the applicant to prove his case through a preponderance of evidence. Therefore, staff recommends DENIAL of the requested certification.