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CERTIFICATION OF NONCONFORMING USE No. 18974-2002-U

Application	General Data
Project Name Green's Parking Lot Location West side of Addison Road, approximately 51 feet south of the intersection of Addison Road and Kolb Street, known as 5443 Addison Road. Applicant Richard M. Greene 5727 Lincoln Avenue Lanham, MD 20706 Correspondent Richard M. Greene 5727 Lincoln Avenue Lanham, MD 20706	Date Accepted 06/18/02
	Planning Board Action Limit N/A
	Tax Map & Grid 066 A-2
	Plan Acreage 0.086
	Zone R-55
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 72
	Council District 05
	Municipality N/A
	200-Scale Base Map 202NE05

Purpose of Application		Notice Dates	
Parking Lot in R-55 Zone		Adjoining Property Owners (CB-15-1998)	4/23/02
		Previous Parties of Record (CB-13-1997)	N/A
		Sign(s) Posted on Site	09/27/02
		Variance(s): Adjoining Property Owners	
Staff Recommendation		Staff Reviewer: Elsabett Tesfaye	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		

October 23, 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. 18974-2002-U**

REQUEST: **Parking Lot in R-55 Zone**

RECOMMENDATION: **APPROVAL with conditions**

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 located on the west side of Addison Road between Kolb and K Streets, approximately 51 feet south of the intersection of Addison Road and Kolb Street, known as 5443 Addison Road. The property (Lot 18) consists of approximately 0.086 acre (3,737 square feet) of land. It is triangularly shaped and developed with a parking lot that serves the use on the adjoining property (Lots 16 and 17).

B. Development Data Summary:

	EXISTING	PROPOSED
Zone(s)	R-55	R-55
Use(s)	Parking Lot	Parking Lot
Acreage	0.086	0.086

- C. History:** The subject property was incorporated into the Maryland-Washington Regional District on April 17, 1928. The 1993 *Approved Sectional Map Amendment for Landover and Vicinity* retained the site in the R-55 Zone.
- D. Master Plan Recommendation:** The 1990 *Approved Master Plan for Landover and Vicinity* recommends the site for Medium-Suburban detached residential use with a density of 4.2 to 6.7 dwelling units per acre.
- E. Request:** The applicant's request is for certification of the nonconforming use of the existing parking lot on Lot 18. The Prince George's County Zoning Ordinance was amended on October 3, 1967, to require a special exception for parking lots located in the R-55 Zone that support an adjacent commercial use. The applicant contends that the parking lot was constructed prior to this date to support an existing shoe repair business that was located on Lot 17 and later expanded onto Lot 16 per permit 10325-77.
- F. Surrounding Uses:** The immediate area surrounding the property is characterized by residential developments in the R-55 Zone. The subject property and the surrounding properties to the north (across Addison Road), south and east (across Addison Road) are zoned R-55. A commercial use in the C-S-C Zone is located on the two adjoining lots to the west, on Lots 16 and 17. The two lots are the only commercially zoned properties on the subject block.
- G. 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.**

The applicant asserts that his family has owned the subject property (Lot 18) and the adjoining commercial lots (Lots 16 and 17) since the mid-1960s. The applicant indicated that Lot 18 has never been used as anything except a parking lot serving the commercial use located on the two adjoining lots. Lots 16 and 17 were zoned C-1 in 1953 (ZMA #1967) and on February 13, 1968, a permit was issued for a shoe repair shop on Lot 17. Neither the zoning change in 1953 nor the permit in 1968 made reference to Lot 18. In 1977, the shoe repair use was extended to Lot 16. According to the Permit Section, the subject parking lot on Lot 18 was indicated on the approved site plan for an addition to the shoe repair store (Permit 1035-77-CGU).

The applicant's request is based on the fact that the Zoning Ordinance was amended on October 3, 1967, to require a special exception for parking lots located in the R-55 Zone that support an adjacent commercial use. The applicant maintains that the use of the subject property as a parking lot was established on the property prior to that time and has been continued until today.

The applicant indicated that the issue of the need for certification of the subject use on Lot 18 was brought to light as a result of a permit request to change the use of the building (on the adjoining

property) from a shoe repair shop to a beauty salon/barber shop. The applicant desires to continue the parking lot use in conjunction with the new business.

A site inspection reveals a parking lot on the subject property, which is adjacent to a commercial building. All indications are that the parking lot is being used in conjunction with the commercial use located on the adjoining property, consistent with the applicant's site plan and statement of justification.

The site plan and all other drawings of the subject property submitted with the application show dimensions that are consistent with the 1910 plat for North Fairmont Heights. It appears that the size and dimensions of the properties along Addison Road have changed through the years, mainly to accommodate the widening of Addison Road. Addison Road currently has an ultimate right-of-way of 80 feet. The distance of 17.05 feet between the subject property and the intersection of Kolb Street and Addison Road does not appear to reflect current conditions at that location. Moreover, there is a possibility that two to five of the parking spaces shown on the site plan may be located within the Addison Road right-of-way. The applicant needs to provide a site plan that reflects all dimensions of the property and the right-of-way of Addison Road in a manner that is consistent with existing conditions of the property.

H. Documentary Evidence: The applicant has submitted the following documentation to establish the existence and continuous use of a parking lot on the subject site since prior to October 3, 1967:

1. Affidavit of Mr. James H. Richardson, a neighbor (across the street) and a resident of Fairmont Heights since 1966, attesting to his personal knowledge of the existence of the parking lot on Lot 18, and that the lot has always and continuously been used as a parking lot since prior to 1967.

The affidavit also states that the subject property, along with the adjoining two lots (Lots 16 and 17), have always been used for commercial purposes and have never been used for residential or any other purpose.

2. Affidavit of Mr. James M. Greene and Mrs. Eunice M. Greene, residents of the Fairmount Heights neighborhood since at least 1945, attesting to their personal knowledge of the existence of the parking lot on Lot 18, and that the lot has always and continuously been used as a parking lot since prior 1967.

The affidavit also states that the subject property, along with the adjoining two lots (Lots 16 and 17), have always been used for commercial purposes and have never been used for residential or any other purpose.

3. A letter from Johnnie R. Saxton, Mayor of the Town of Fairmount Heights, on behalf of the Town Council, indicating that the subject property has always been used as a parking lot since the previous shoe store was originally built.

The mayor further stated that he has no knowledge of the parcel ever being used for any purpose other than as parking for the shoe repair shop.

4. A copy of Consolidated tax bill for tax year July 1, 2000, to June 30, 2001.

The applicant maintains that the low assessed value of the property indicates that the State Department of Assessments and Taxation has concluded that the use on the parcel is not residential in nature.

CONCLUSION

Based on the evidence submitted by the applicant and the lack of contradictory evidence from other sources, staff concludes that the subject parking lot was established prior to October 3, 1967, and has been in continuous use since that time. Therefore, it is recommended that this application be APPROVED, subject to the following condition:

Prior to the issuance of permits, the site plan shall be revised, signed and sealed by a registered engineer or land surveyor. The site plan shall show: (1) the present configuration of Lots 16, 17 and 18, including bearings and distances in feet; (2) existing improvements and layout of the parking lot; (3) the existing and proposed ultimate rights-of-way for Kolb Street and Addison Road; and (4) Lot 18 outlined in red.