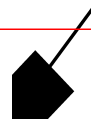


Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530



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 INFORMATION AT THE @ SIGN
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 LIKE THE TEXT IS GOING WACKO, BUT
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CERTIFICATION OF NONCONFORMING USE 28328-U-01

Application	General Data
Project Name Daniels, Marvin	Date Accepted 10/15/2001
	Planning Board Action Limit N/A
Location North side of Deanwood Drive approximately 150' east of Doewood Lane, known as 4704 Deanwood Drive.	Tax Map & Grid 065 E-1
	Plan Acreage 0.09
Applicant Marvin Daniels P.O. Box 5177 Capitol Heights, Maryland 20743	Zone R-55
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 72
	Council District 05
	Municipality N/A
	200-Scale Base Map 202NE4

Purpose of Application			Notice Dates	
Certification of 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	05/06/02
			Variance(s): Adjoining Property Owners	N/A
Staff Recommendation			Staff Reviewer: Tom Lockard	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION	
		X		

May 29, 2002

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Tom Lockard, Senior Planner

SUBJECT: **Certification of Nonconforming Use Application No. 28328-U-01**

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

RECOMMENDATION: **DENIAL**

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 north side of Deanwood Drive, 150⁺ feet east of Doewood Lane. The property is developed with a single residential building which has been converted into two separate living units.
- B. History: The subject property was placed in the R-55 Zone by the Comprehensive Map adoption in November 1949. The site was retained in the R-55 Zone by both the 1977 *Sectional Map Amendment (SMA) for the Model Neighborhood* as well as the 1993 *Sectional Map Amendment for Landover and Vicinity*.

On November 12, 1992, the Prince George's County Planning Board certified this use as legally nonconforming by approving Certified Nonconforming Use Application No. 4777-92-U via PGCPB Resolution No. 92-282. Permit No. 4777-92-U was subsequently approved, but never issued. It was eventually abandoned in 1994 by the previous owners. Apparently the building sat vacant and unused for at least the time period from 1994 until July 2001, when it was purchased by the applicant. The units are now both occupied.

- C. Master Plan Recommendation: The 1993 *Master Plan for Landover and Vicinity* recommends a medium-suburban residential density (3.6-5.7 du/acre) for the subject property and the surrounding area.
- D. Request: The applicant seeks certification of the two-family dwelling in the R-55 Zone.
- E. Surrounding Uses: The subject property is surrounded by single-family residences and undeveloped land in the R-55 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.**

G. Documentary Evidence: The applicant has submitted a statement explaining that he purchased the property under the impression that because the two-family dwelling had been certified in 1992, it was in full conformance with the Zoning Ordinance. He relies on the previous record from Application No. 4777-92-U to show legal establishment and continuity.

The applicant must show that the subject two-family dwelling has existed on the site since September 20, 1988, when CB-85-1988 rendered the use nonconforming. The applicant must also show that said use has not ceased operation for more than 180 days between the time the use became nonconforming and the date this application was filed (October 15, 2001). We know that the two-family dwelling was once a permitted use, albeit by virtue of a misprint in the Zoning Ordinance which was in effect from July 1986 to September 1988, when it was corrected via CB-85-1988. The Planning Board has previously found this use to be legally established.

However, the applicant cannot show that the use has operated continuously without a break of more than 180 days. By the applicant's own admission, this use sat vacant and unused for a period of six or seven years after the previous owner abandoned the previous permit. Therefore, this use lost its legal nonconforming status long before the applicant purchased the property.

While it certainly could be argued that this six- or seven-year period of nonoperation was beyond the applicant's control, this would not be a persuasive argument. The period of nonoperation must be beyond the control of the persons who owned the property at the time. According to the applicant, the previous owners made the decision to abandon the permit due to insufficient finances, illness and a death in the family. Having just gone through the certification process, it must be assumed that the applicant knew they were jeopardizing their legal nonconforming status when they decided to

abandon the permit. The applicant purchased and leased the property based on the previous owner's assertions.

CONCLUSION:

The applicant can show that the two-family dwelling was legally established. The applicant cannot show that the use has operated continuously since 1988 to the present without a break of more than 180 days. By all accounts, this use sat vacant and unused for six or seven years. Therefore, it is not eligible for certification. Staff recommends DENIAL of Certification of Nonconforming Use Application No. 28328-U.