



CERTIFICATION OF NONCONFORMING USE No. 28400-01-U

Application	General Data
Project Name: Thomas R. and Trudy Gaines Location: North side of Livingston Road, approximately 250 feet east of Dyson Lane, known as 18412 Indian Head Highway Applicant/Address: Thomas Roland and Trudy A. Gaines 16800 Indian Head Highway Accokeek, Maryland 20607 Correspondent: William E Knight Knight, Manzi, Nussbaum and LaPlaca 14440 Old Mill Road Upper Marlboro, Maryland	Date Accepted 01/09/02
	Planning Board Action Limit N/A
	ZHE Hearing Date N/A
	Plan Acreage 1.34
	Zone R-R
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 83
	Council District 05
	Municipality N/A
	200-Scale Base Map 224SW3

Purpose of Application	Notice Dates
Certification for a three-family dwelling	Adjoining Property Owners (CB-15-1998) N/A
	Previous Parties of Record (CB-13-1997) N/A
	Sign(s) Posted on Site 5/17/02
	Variance(s): Adjoining Property Owners N/A

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

June 12, 2002

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner

SUBJECT: **Certified Nonconforming Use Application No. 28400-2001-U**

REQUEST: **Certification for a three-family dwelling**

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 property extends from the south side of Indian Head Highway (MD 210) to the north side of Livingston Road, approximately 250 feet east of Dyson Lane and 650 feet northeast of the Charles County line, known as 18412 Indian Head Highway (the applicants use 18412 Livingston Road as the address, but the correct address issued for the subject property is 18412 Indian Head Highway). The property comprises approximately 1.34 acres of land and has 455 feet of frontage on Indian Head Highway and 438 feet of frontage on Livingston Road. The property is improved with four buildings consisting of three single-family dwellings and one large two-family dwelling located on the west side of the property. All four buildings exhibit a rundown appearance; however, they all appear to be occupied. The larger building, which is the subject of this application, also includes three decks located on its south and west sides.
- B. History: The subject property was incorporated into the Maryland-Washington Regional District on April 24, 1961, and was placed in the R-R Zone. The 1979 *Accokeek, Tippett and Piscataway Sectional Map Amendment* (SMA) placed the property in the R-A Zone. The 1993 SMA for Subregion V rezoned the property from the R-A Zone to the R-R Zone. On April 2, 1987, the Prince George's County Planning Board approved certification for three single-family dwellings and one two-family dwelling.
- C. Master Plan Recommendation: The 1993 *Master Plan for Subregion V* recommends the site for low suburban detached residential use with a density of 1.6 to 2.6 dwelling units per acre.
- D. Request: The applicants request certification of the two-family dwelling as a three-family dwelling. The applicants contend that, at the time of the 1987 certification, the owner inadvertently did not include the third unit because it was being utilized as a living quarter for a property maintenance worker and was not being rented for a cash fee.
- E. Surrounding Uses: The immediate neighborhood is rural in character and mostly undeveloped. The property is surrounded by a single-family dwelling to the east in the R-R Zone and undeveloped property to the west also in the R-R Zone. To the north across Indian Head Highway are located a few single-family houses on large parcels of land with a vast area of undeveloped land in the background, all in the R-A Zone. To the south across Livingston Road is located a large expanse of undeveloped land in the R-R 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 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 subject building was certified as a two-family dwelling pursuant to Prince George's County Planning Board Resolution No. 87-121. The three single-family dwellings on the same property were also certified as nonconforming uses pursuant to the same resolution.

The applicants claim that at the time of the 1987 certification, a third unit existed in the building that was certified as a two-family dwelling. However, certification was not requested for the third unit because ■ it was not being rented for a cash fee.● The applicants now claim that the third unit was being utilized as a living quarter for a maintenance person. The applicants▲ claim contradicts the previous testimony and the findings of the Planning Board.

Finding No. 2 from PGCPB No. 87-21 reads as follows:

The applicant supplied an additional notarized statement from the former owner of the property stating that the two-family detached dwelling had been in that

configuration (two dwelling units) prior to April 24, 1961; substantiating that the two-family dwelling use on the property existed prior to incorporation into the Maryland-Washington Regional District.

***NOTE:** Because staff initially expressed doubt about the existence of the second dwelling unit in the subject building before April 24, 1961, the applicant provided additional evidence at the April 2, 1987, hearing to show that both units existed in the building prior 1961.*

Review of the record of the last certification yielded no reference to the third unit, either as a maintenance quarter or a rental unit. Moreover, the certified site plan identifies the subject building as a two-family dwelling unit. Two use and occupancy permits were issued for the uses on the subject property per Resolution No. 87-121●one, on May 18, 1987, for the three single-family uses (No. 9270-86-U) and a second one, on March 9, 1992, for the two-family dwelling use (# 419-92-U). The existence of the third unit was not brought up when the applicants requested the use and occupancy permit issued in 1992.

In addition, Ann C. Magner, Associate County Attorney of the Prince George's County Office of Law, has submitted the following affidavits attesting to the fact that on the dates indicated in the affidavits there were two, not three, dwelling units in the building.

1. An affidavit of Mr. Robert P. Payne, who was a Senior Inspector in the Property Standard Division, Prince George's County Department of Environmental Resources in 1986, attesting to the fact that when he inspected the subject building on June 5, 1986, the building contained only two dwelling units. He further indicated that there were living quarters on each end of the building and the middle section of the building was a laundry and storage room; there were not three dwelling units in the building at the time.
2. An affidavit of Fred W. Holzberger, a Zoning Inspector in the Community Standards Division, Prince George's County Department of Environmental Resources, attesting to the fact that on September 10, 1996, he inspected the subject property and issued Use and Occupancy Permit #419-92-U for two dwellings (A& B) in the subject building. The affidavit further states that at the time of this inspection, the center section of the building was not a dwelling unit.

According to Ann C. Magner, the applicants are currently under a court order to vacate the third unit that is the subject of this application because it is occupied without a valid use and occupancy permit.

As previously noted, three wooden decks that were not shown on the site plan at the time of the 1987 certification are illustrated on the current site plan. The decks are located on the west and south sides of the building. The applicants' statement of justification indicates that the decks were in existence when the applicants bought the property and presumed to be there for many years. However, the site plans in the record do not show any of the decks. The applicants have not provided any evidence demonstrating that the decks existed at the time the use became nonconforming. Furthermore, there is no evidence that the required permits were obtained to construct the decks.

- G. Documentary Evidence: The applicants have submitted the following documentation to establish the existence and continuous use of three dwellings in the subject building since prior to the April 24, 1961.

1. An affidavit of Mr. James O. Johnson, resident of the Ft. Washington area for 35 years, attesting to his personal knowledge of the existence of three units in the subject building, and that the units were occupied by three families from 1960 to present.
2. An affidavit of Mrs. Thelma Proctor, a resident of Charles County, attesting to her personal knowledge of the fact that the building was constructed in the late 1950s and it was built for occupation by three families and used as such for 50 years.

Although the evidence provided by the applicants is consistent, it is not compelling. The applicants are informed of the need for additional evidence such as rent receipts, utility installation records, and building permits to establish the existence and continuous occupation of the third dwelling unit since prior to 1961. As of the completion of this report, no such evidence was provided.

CONCLUSION:

The documentary evidence provided by the applicants is insufficient. Furthermore, the contradictory evidence provided by two zoning inspectors who inspected the subject building, at two different times (with a 10-year interval), places additional burden upon the applicants to prove their case through a preponderance of evidence. Therefore, staff recommends DENIAL of the requested certification.