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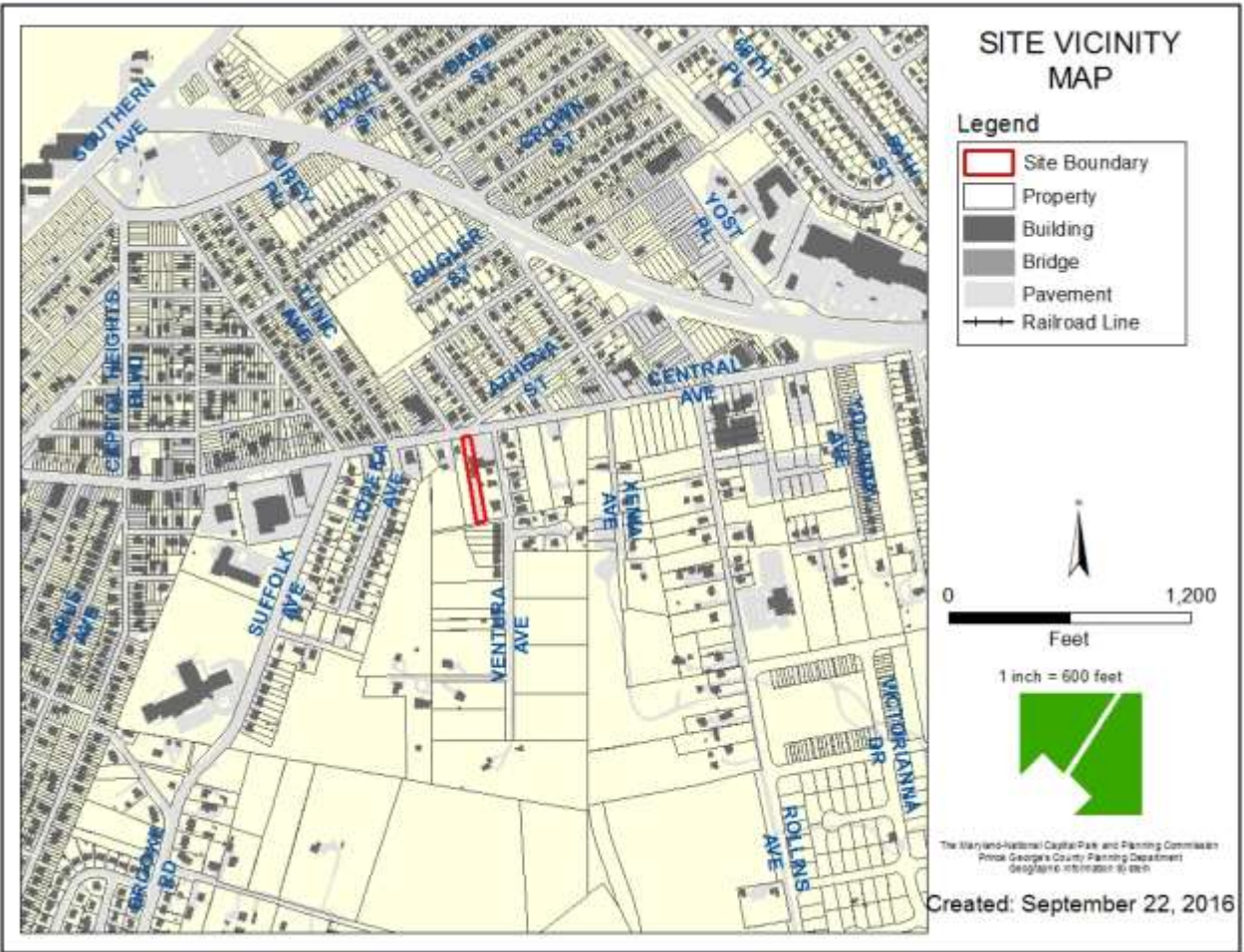
Certification of Nonconforming Use

CNU-48061-2015

Application	General Data	
Project Name: McGhee Property Location: On the south side of Old Central Avenue (MD 214) approximately 100 feet west of its intersection with Ventura Avenue. Applicant/Address: Tommy and Fred McGhee P.O. Box 25 Morganza, MD 20660 Property Owner: Tommy and Fred McGhee P.O. Box 25 Morganza, MD 20660	Planning Board Hearing Date:	10/20/16
	Staff Report Date:	10/14/16
	Date Accepted:	06/13/16
	Planning Board Action Limit:	N/A
	Plan Acreage:	0.50 acres
	Zone:	R-T/T-D-O
	Gross Floor Area:	3,327 sq. ft.
	Lots:	2
	Parcels:	N/A
	Planning Area:	75A
	Council District:	07
	Election District	18
	Municipality:	N/A
	200-Scale Base Map:	201SE05

Purpose of Application	Notice Dates	
This case was continued from the Planning Board hearing date of October 13, 2016 to October 20, 2016 Certification of a nonconforming use for an automotive repair facility with four service bays and auto storage area.	Informational Mailing:	11/12/15
	Acceptance Mailing:	06/10/16
	Sign Posting Deadline:	09/13/16

Staff Recommendation		Staff Reviewer: Taslima Alam Phone Number: 301-952-4976 E-mail: Taslima.Alam@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Supervisor, Zoning Review Section, Development Review Division

FROM: Taslima Alam, Senior Planner, Zoning Review Section, Development Review Division

SUBJECT: **Certification of Nonconforming Use Application No. CNU-48061-2016
McGhee Property**

REQUEST: **Certification of a nonconforming use for an automotive repair facility with
four service bays and auto storage area**

RECOMMENDATION: **DISAPPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of October 13, 2016. This case was continued to the Planning Board agenda date of October 20, 2016. The Planning Board also encourages all interested persons to request to become a person of record for this application.

Requests to become a person of record should be made in writing and addressed to The Maryland-National Capital Park and Planning Commission, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Please call 301-952-3530 for additional information.

FINDINGS

- A. **Location and Field Inspection:** The subject property, 6125 Old Central Avenue is located approximately 100 feet west of its intersection with Ventura Avenue and Old Central Avenue (MD 214). The rectangular shaped property, which consists of part of Lot 2, is comprised of 0.50 acre of land in the R-T (Townhouse) and T-D-O (Transit-District-Overlay) Zone. The site is improved with a one-story boarded up cinderblock building with four auto repair service bays, with an unmarked asphalt parking lot in the front part of the property, and a compact stone parking lot in the back portion of the property. The site is enclosed by various types of fences (partly chain-linked fence, wrought-iron fence, and board-on-board fence) along the south, east and west side. The site has an existing freestanding sign. Access to the development is from Old Central Avenue (MD 214) via a 24-foot-wide driveway in the front and 11-foot-wide driveway to the west side of the existing building that leads into a rear parking lot with a wooden gateway. This 11-foot two-way driveway access does not conform to the requirements of Section 27-560, interior driveway widths, of the Prince George's County Zoning Ordinance.

During the field inspection, it was noted that the overall site is very poorly maintained. The existing vacant building is dilapidated, the fence around the property is falling apart, and the existing asphalt parking lot in the front is crumbling. The rear parking lot is overgrown with tall shrubs and weeds on the paved area that made it difficult to distinguish what is paved and not paved on the subject site. The trash dumpster is overfilled and in poor condition. The building is currently vacant and does not appear to be usable for any business. However, it is currently being used for tire storage by the tenant.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone	R-T/T-D-O	R-T/T-D-O
Square feet	10,000	21,775
Use(s)	Automotive repair facilities with four service bays	Automotive repair facility with four service bays and storage area
Lot(s)	Part of a lot	Entire lot 2

- C. **History:** The following information was derived from documentation that was submitted by the applicant and from the permit history of the site as it relates to the use.

1956—Zoning Map Amendment (ZMA-2691) split zoned the subject Lot 2 to R-R (Rural Residential) and C-2 (General Commercial). The front portion of the property was changed from R-R to C-2 Zone while the rear portion of the property was retained R-R.

1958—The existing building was constructed to be used as an auto repair service facility. The original use and occupancy permit was issued by Prince George's County Department of Building Inspections for an "Auto Repair Shop" (Exhibit 1a). At that time, the address of the subject property, according to the telephone conversation with the owner Mr. McGhee was 6325 Central Avenue.

1970—Special Exception, SE-2376 was approved for an "automobile repair and service station" use for the front C-2 portion of subject property (6125 Old Central Avenue) and the adjacent (6127 Old Central Avenue) property only because auto repair or storage service has never been a

permitted used in a residential zone (Exhibit 1b). The service station was located at 6127 and automobile repair was located on the 6125 Central Avenue.

March 1977—County Council Bill (CB-119-1976) was adopted which prohibited auto repair and service uses the C-2 Zone.

September 1982—Both properties (6125 and 6127 Old Central Avenue) were certified as nonconforming uses. Subsequently, Use and Occupancy Permit, 51075-82-U was issued by the Prince Georges County Department of Environmental Resources (DER). The rear R-R zoned portion of the property was not part of the certification.

In 1985—The *Approved Master Plan for Suitland-District Heights and Vicinity, Planning Areas 75A and 75B* rezoned the entire (Lot 2) property to R-T.

December 1988-2005—The subject property was leased on a month-to-month term to Felix Jordan, who was operating the auto repair business under the same use and occupancy permit until Mr. Jordan was evicted for non-payment of rent.

January 2006—Fred and Tommy McGhee (applicant) began leasing the subject 6125 Old Central Avenue property to Johan Thorpe Jr. and Mark Simpson continued to operate the site as an automobile repair service.

April 2007—The McGhee's sold 6127 Central Avenue to Peter Fuamuluh (Exhibit 4). The Maryland-National Capital Park and Planning Commission (M-NCPPC) approved Mr. Fuamuluh Use Occupancy Permit Application number 19044-2007 under the trade name "Tire Hall" because the documentation for a CNU was found to be sufficient for this address. Meanwhile, the McGhee's continued leasing 6125 Old Central Avenue.

July 2008—The 2008 *Approved Capitol Heights Transit District Development Plan (TDDP) and Transit District Overlay Zoning (TDOZ) Map Amendment* placed the Subject property within the Capital Heights Transit District Overlay Zone. Automobile repair use was no longer a permitted use within the T-D-O-Z or the underlying R-T Zone without designation as a nonconforming use.

November 2008—Due to tenant's failure to pay rent, the McGhee's were granted a Warrant of Restitution and the tenants were evicted in December of 2008 (Exhibit 14 a-c).

January 1, 2009—the McGhee's entered into a new lease agreement with the adjacent Tire Hall business owner, Mr. Peter Fuamuluh (new tenant). The lease specified that the "premises shall be used by tenant solely for the purpose of conduction therein of an auto repair facility (Exhibit 6)."

July 2009—Mr. Fuamuluh sublet a portion of the subject property to Attignon Emmanuel to operate his Emmanuel Welding business until January 2011. A welding shop is not a use that is listed in the R-T/T-D-O Zone; therefore, it is prohibited. Furthermore, a welding shop was not issued a permit to operate at this location prior to the rezoning; therefore, cannot be deemed lawful.

During 2010 to 2015—Prince George's County Department of Permitting, Inspection and Enforcement (DPPIE) issued a number of zoning violation notices for various reasons. The violations are as follows:

1. **December 2010**—Violation Case No. Z-837-7-11 was issued to Attignon Emmanuel and Peter Fuamuluh for operation of a business, including the practice of having employees report to the property for work/or storage of equipment and materials (Section 27-441(b)(1)); parking/storage of any motor vehicle which is wrecked, dismantled or not currently licensed; park/storage of commercial vehicles on R-T zoned property (Section 27-441(b)(8)); and use of a building, structure, and land without a use and Occupancy permit (Section 27-253(a)(1)).
 2. **August 28, 2014**—Violation notice (PM-102-7-15) was issued of the Anti-Litter and Weed Ordinance of Prince George’s County for not cutting tall grass and weeds over twelve (12) inches and for removal of accumulated litter, trash, debris, unlicensed, wrecked or dismantled vehicles from property to an authorized landfill.
 3. **February 2015**—Violation notice (Case No. Z-1141-7-15) was issued to Fred and Tommy L. McGhee (owner) for use of a building, structure or land without a use and occupancy permit per section 27-253(a)(1) of the Zoning Ordinance and 4-118(c).
 4. **March 2011**—Mr. Fuamuluh (tenant) applied for a Use and Occupancy Permit Number 8170-2011-U for auto repair use. This permit was placed in hold by M-NCPPC, Prince George’s County Planning Department, Development Review Division, Permit Review Section because the M-NCPPC staff found the documentation to be inadequate. Due to lack of action by applicant, this permit was abandoned on December 4, 2014.
 5. **October 26, 2015**—Fred and Tommy McGhee (owner) filed for another Use and Occupancy permit (48061-2015-U) for certification of nonconforming use for Capitol Heights Auto Repair Service and Auto Storage Area for the subject site. This permit is placed on hold again by M-NCPPC due to inadequate documentation of continuous operation and that the auto storage use was never a permitted use in this residential zone.
- D. **Master Plan Recommendation:** The 2010 *Approved Subregion 4 Master Plan and Section Map Amendment* retained the subject property in the R-T/ T-D-O Zone.
- E. **Request:** The applicant is requesting certification of a nonconforming use for an existing automotive repair facility with four service bays and to expand the existing nonconforming use lot size by 11,775 square feet to the rear of the property, for a total 21,775-square-foot lot zoned R-T/T-D-O. The area of expansion is proposed to be used for auto storage purposes.
- F. **Surrounding Uses:** The site is surrounded by the following uses:
- North—** Old Central Avenue right-of-way; Across Old Central Avenue is existing single-family residential development in the R-55 Zone.
 - South—** Existing one-family semi-detached housing development home in R-T Zone.
 - East—** Immediately adjacent to the subject site is an automotive repair service facility with three service bays. Immediately south of the auto repair shop is single-family residential development in the R-T Zone.
 - West—** Existing single-family housing development in the R-T Zone.

G. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. Section 27-244 of the Prince George's County Zoning Ordinance sets forth the following specific requirements for certifying a nonconforming use:

(a) **In general.**

- (1) **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) or the District Council certifies that the use is nonconforming and not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division).**

(b) **Application for use and occupancy permit.**

- (1) **The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**
- (2) **Along with the application and accompanying plans, the applicant shall provide the following:**
 - (A) **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;**
 - (B) **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 one hundred eighty (180) consecutive calendar days between the time the use became nonconforming and the date when the application is submitted, or that conditions on nonoperation for more than one hundred eighty (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;**
 - (C) **Specific data showing:**
 - (i) **The exact nature, size, and location of the building, structure, and use;**
 - (ii) **A legal description of the property; and**
 - (iii) **The precise location and limits of the use on the property and within any building it occupies;**
 - (D) **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.**

Analysis: The subject property and its adjacent property to the east were developed as auto repair services facility in July 1958 under the same ownership. The auto repair and service facility were established in accordance with the C-2 Zoning Regulation through a Special Exception approval, SE-2376 for the front part of the subject property (6125 Old Central Avenue, AKA part of Lot 2) and its adjacent property to the east (6127 Old Central Avenue, AKA, part of Lot 3). The rear portion of the lots were kept in the R-R (residential) Zone. However, over the years, the owner expanded the special exception boundary for 6125 Old Central Avenue to the south by approximately 235.5 feet to its residential R-R zoned portion of the lot for automobile storage use. Neither use, nor the expansion had any permit or special exception approval. At the time of the site visit, Mr. Tom McGhee's informed staff, that to his knowledge, the entire front and back of the subject site has always been used for auto storage in conjunction with automobile repair services.

As noted in Section 'C' above, an auto repair service use became nonconforming after the adoption of County Council Bill (CB-119-1976) in 1977. The bill prohibited auto repair and services in the C-2 Zone; therefore, a certification of nonconforming use was acquired in 1982 for both properties. A Use and Occupancy Permit 51075-82-U was also issued for the same special exception boundary only. The subject site lost its nonconforming status beginning July 2009, when the current tenant, failed to operate auto repair services on the site. An e-mail from inspectors Shane, Prince Georges County Department of Permitting, and Inspection and Enforcement (DPIE), dated August 12, 2016, confirmed that Mr. Fuamuluh sublet part of the existing building to a welder to operate a welding business and used rest of the site including a part of the building for tires storage and wrecked vehicle storage. Inspector Shane further stated that the site has not had any legitimate occupants doing anything lawful since 2009. For these reasons, a number of zoning violations were issued on the site beginning 2010 which ultimately required the businesses to shut down. Subsequently, Mr. Fuamuluh had applied for a certification of nonconforming (8170-2011-U) use with the M-NCPPC. Upon reviewing the application, the M-NCPPC Permit Review Section staff found the documentation to be inadequate and requested additional proof for continuous usage from January 2008 to present for automotive repair services. Due to lack of action, the permit application was ultimately abandoned. Later, the owner, Mr. McGhee applied for another certification of a nonconforming use (CNU-48061). The owner was also unable to provide any evidence such as invoice of the business transaction, income tax record or municipal business license etc. demonstrating the automobile repair services was provided on the site. Thus, this permit is placed on hold by M-NCPPC Permit Review Section. Consequently, in accordance with Section 27-244(f) of the Zoning Ordinance, the Planning Board must determine whether, infact, the uses were legally established prior to the date it became nonconforming and that it has been in continuous operation since that time.

The applicant submitted the following documentary evidence in support of the application:

1. February 28, 2008—failure to pay rent action (Case #509) granted by District Court in favor of McGhee against John Thorpe Jr. and Mark Simpson, tenants for the subject property (Exhibit 14a).
2. August 4, 2008—failure to pay rent action (Case # 334) granted by the District Court in favor of McGhee's against John Thorpe Jr. and Mark Simpson, for the subject site (Exhibit 14b).
3. November 6, 2008—warrant of Restitution granted by District Court in favor of the McGhee's against John Thorpe Jr. and Mark Simpson, tenants for the subject site (Exhibit 14c).

4. January 1, 2009—lease agreement between Fred and Tommy McGhee and Peter Fuamuluh (new tenant) for 6125 Central Ave. The lease clearly indicated in paragraph 9 on page 4-5 of the lease that “the leased premises shall be used by tenant solely for the purpose of conduction therein business of an auto repair facility. Tenant shall not use the leased premises for any other purpose without the written consent of the Landlord.” The lease further indicate that, “...the tenant shall obtain all required licenses and permits including use and occupancy permit (Exhibit 6).
5. A copy of advertisement including both addresses 6125 and 6127 Central Avenue under the same Tire Hall business operation. (Exhibit 14d).

Note: This poster does not indicate any date the advertisement was created. It does not specify any auto repair service on the subject site. Rather, it shows sales of tire, acceptance of unwanted vehicles on the site.
6. Copies of a zoning violation notices: (case number Z-837-7-11) dated December 9, 2010; PM-102-7-15, dated August 28, 2014 and Z-1141-15, dated February 11, 2015. (Exhibit 14f, 14g and 14h).
7. Letter from Mr. McGhee requesting Inspector Shane to dismiss the zoning violation Case No. Z-837-7-11.
8. An affidavit from Mr. Fred McGhee, (owner) dated May 17, 2011 acknowledging that the premise has been leased on month to month basis since 1988 to present to different tenant who had performed auto repairs consisting of mechanical repairs to cars and body work. Mr. Fuamuluh also had performed repairs according to the Lease Agreement (Exhibit 13a) and sublet part of the premise to Emmanuel Welding business who performed welding and auto body work from the date until May 2011.
9. An affidavit from Mr. Peter Fuamuluh (tenant) dated September 2011, acknowledging subleasing a portion of the premises at 6125 Central Ave to Attingnon Emmanuel for his Ennanuel Welding business. The welding business performed various work including automobile repair work in the premises (Exhibit 13b).
10. An affidavit dated October 23, 2011 from inspector Berry Wade, Prince George’s County, Maryland, Department of Environmental Resources, Property Standard Group, testifying that Mr. Fuamuluh operated auto repair services on the property from Aug. 2011 to September 2011 along with one other person doing welding on vehicle exhausts systems and bumpers.(Exhibit 13c).
11. An affidavit from Fred McGhee dated November 8, 2015, testifying that the property has been continuously operating solely as an auto repair facility since January 2009 to present. (Exhibit 15).
12. Copies of electric bills payment records from Potomac Electric Power Company (PEPCO) from October 2009 to December 2013 (Exhibit 14e, 14g, 14k).
13. A copy of rent payment check from Tire Hall (tenant) to Mr. McGhee (owner) dated June 2012 (Exhibit 14).

In addition, staff has reviewed a number of aerial photographs from 1965–2016. The maps show the building was expanded sometimes between 1968 and 1977. In addition, the aerial photos show that an auto storage was established in conjunction with an auto repair facility on the rear residentially zoned portion of the site without proper use permit from as early as 1965.

Section 27-107.01(250) defines a Vehicle Repair and Service Station: A facility where the business of general vehicle repair and service is conducted, not including vehicle salvaging or the storage of dismantled vehicles, wrecks, or junk.

Comment: In this case, the property has been primarily used for collecting and storing tires and wrecked vehicles in the Residential Zone. None of the uses are permitted in the zone.

Section 27-242(a)(1) of the Zoning Ordinance sets forth the following specific requirements for alteration, extension, or enlargement of a certified nonconforming use:

(a) In general.

(1) A nonconforming building or structure, or a certified nonconforming use (except as provided for in this Section) may be altered, enlarged, or extended, provided that:

(A) The alteration, enlargement, or extension conforms to the building line setback, yard, and height regulations of the zone in which the use is located; and

(B) A special exception has been approved by the District Council, in accordance with Part 4 of this Subtitle.

Comment: The subject auto repair lot was enlarged by 11,775 square feet and the expanded portion was used for automobile storage facility in conjunction with auto repair services. In addition, the submitted site plan indicates that the subject building was also expanded 513 square feet between 1968 and 1977. No permits or a revision of a special exception approval were found in the record for these enlargements. Neither the expansion nor the use were lawfully established in accordance with the residential zoning regulation. Staff therefore recommends that the only avenue to allow such an expansion and uses to continue is to request a zoning map amendment to rezone the subject property.

Discussion: This property was certified as a nonconforming four-bay auto repair service in 1982 per Permit number 5175-82-U. As of July 2008, the property was located within the Capital Heights T-D-O (Transit District Overlay) zone. Per applicability section of the Capitol Heights T-D-O Zone, any uses that were lawful or could be certified as a legal nonconforming use on the date of T-D-O zoning map amendment approval are exempt from the TDDP standard and are not nonconforming. The subject property has changed its allowed use since 2009 under the possession of the current tenant. The unauthorized uses, including welding business, automobile and tire storage were established on the site after the approval of the Capital Heights TDDP. These uses were never lawfully established in accordance with the requirements of the Zoning Ordinance. For these reasons, the nonconforming status was lost. Consequently, staff recommended two options to the applicant in order to reestablish the four-bay auto repair use on the site. First, provide appropriate documentation such as, business license, business invoice, income tax record that clearly demonstrate that auto repair services has been provided on 6125 Old Central Avenue and had been continuously operating without any break in use for more

than 180 calendar days. In addition, the applicant shall restore the size of the lot in accordance with the prior approved site plan dated September 10, 1982 (Exhibit 2). The applicant's attorney, Mr. Nagy indicated that his client will not be able to downsize the lot to its original size. In that case, a second option was recommended by staff to file a detailed site plan (DSP) review to amend the applicability section of the Capitol Heights TDDP and TDOZ in order to reinstate the auto repair service use with four service bays only. Applicant chose to not go through a DSP approval process either.

CONCLUSION

It is required that the documentary evidence be provided by the applicant to clearly show two things: legal establishment of the use and continuity of use. Applicant has not been able to produce proper documentation to clearly indicate that auto repair service was a continuous use on-site since 2008. Furthermore, the expansion and auto storage use itself was never a lawful use in the zone prior to the change in zoning designation in the R-T/T-D-O. Therefore, based on the documentation and above reasons, staff recommends that the request for Certification of Nonconforming Use Application No. CNU-48061-2015 be DISAPPROVED.