



Note: Staff reports can be accessed at www.mnccppc.org/pgco/planning/plan.htm.

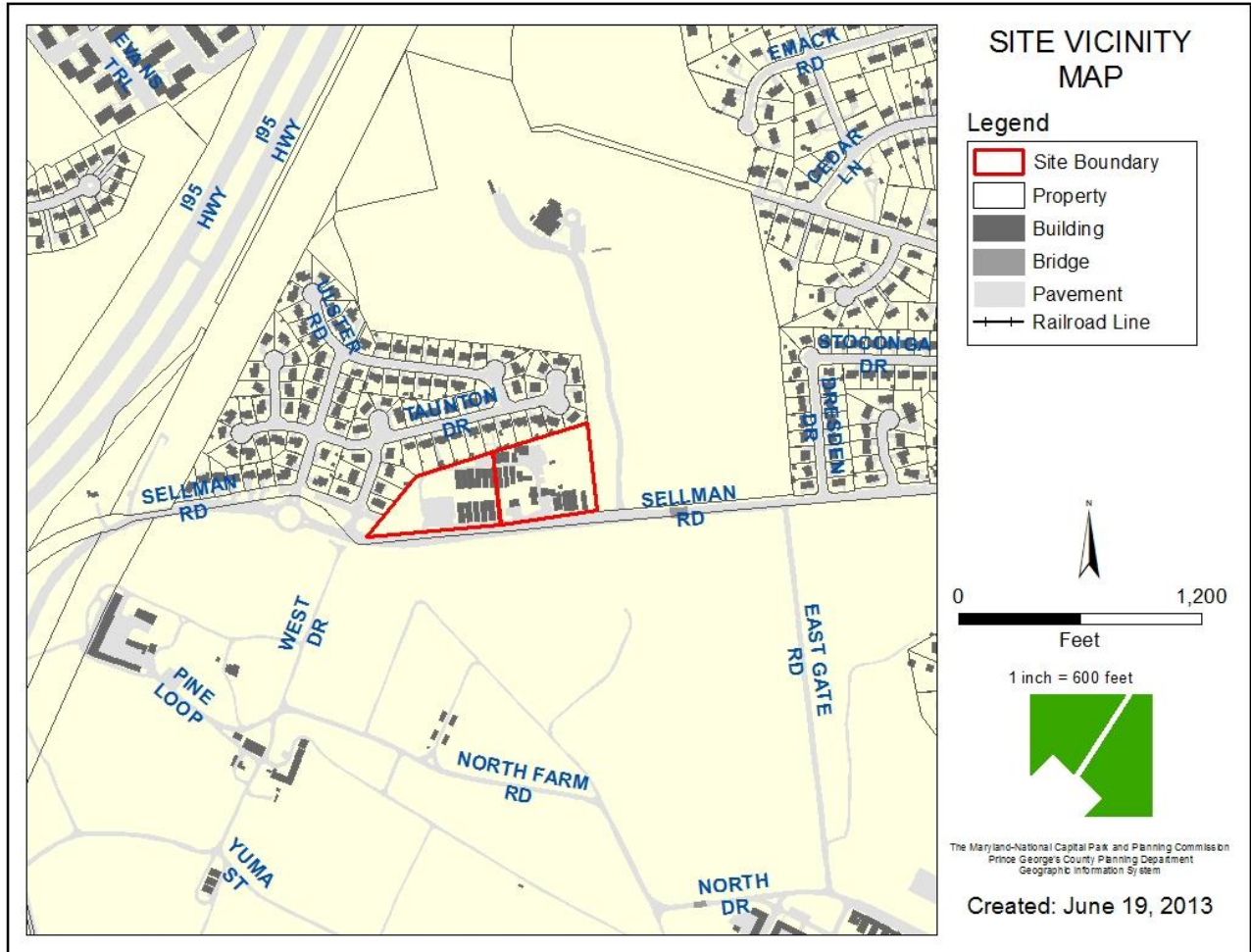
Certified Nonconforming Use

CNU-625-76

Application	General Data	
Project Name: Holland Gardens Nursery and Landscaping, Inc. Location: On the north side of Sellman Road, east of its intersection with Weymouth Avenue. Petitioner: Prince George's County Government Department of Environmental Resources 9400 Peppercorn Place Largo MD 20774 Property Owner: Mr. and Mrs. Arnold Leupen 3800 Sellman Road Beltsville MD 20705	Planning Board Hearing Date:	07/18/13
	Staff Report Date:	07/02/13
	Date Accepted:	04/11/13
	Planning Board Action Limit:	N/A
	Plan Acreage:	6.03
	Zone:	R-80
	Gross Floor Area:	N/A
	Lots:	2
	Parcels:	N/A
	Planning Area:	61
	Tier:	Developing
	Council District:	01
	Election District	01
	Municipality:	N/A
	200-Scale Base Map:	214NE04

Purpose of Application	Notice Dates	
Revocation of CNU-625-76, a nonconforming use for a nursery and garden center.	Informational Mailing	N/A
	Acceptance Mailing:	N/A
	Sign Posting Deadline:	06/18/13

Staff Recommendation		Staff Reviewer: Ivy Thompson Phone Number: 301-952-4326 E-mail: Ivy.Thompson@ppd.mnccppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	



July 2, 2013

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Zoning Supervisor, Development Review Division

FROM: Ivy R. Thompson, Senior Planner, Zoning Section, Development Review Division

SUBJECT: **Certified Nonconforming Use Application No. CNU-625-76
Holland Gardens Nursery and Landscaping, Inc.**

REQUEST: **Revocation of CNU-625-76, a nonconforming use for a nursery and garden center.**

RECOMMENDATION: **DENIAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of July 18, 2013. 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 is located on the north side of Sellman Road, east of its intersection with Weymouth Avenue. The subject property contains approximately 6.03 acres and consists of Parcels 188 and 151. The property is known as Holland Gardens Nursery and Landscaping Inc., 3800 Sellman Road, Beltsville, Maryland and is currently zoned One-Family Detached Residential (R-80).

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone	R-80	Unchanged
Acreage	6.0329	Unchanged
Use(s)	Nursery & Garden Center	Unchanged
Parcel(s)	2	Unchanged

- C. **History:** Holland Gardens Nursery originated at its present location in October 1950. The subject property was certified as nonconforming on February 24, 1977 for the operation of a nursery garden and landscaping center (wholesale and retail). The property was rezoned in 1990 from Rural Residential (R-R) to R-80. In March 1985, 4.3 acres of the subject property was conveyed by deed to Catherine Leuppen. Most recently, Permit 8322-2013-U was submitted on January 9, 2013 for firewood sales. A temporary Use and Occupancy Permit, 836-T-U-O, was granted on January 10, 2013 and expired May 9, 2013 for firewood sales.

- D. **Master Plan Recommendation:** The 2010 *Approved Subregion 1 Master Plan and Sectional Map Amendment* recommends this property for a Low-Density Residential Use, with a designation of (One-Family Detached Residential) R-80 Zone.

- E. **Request:** The Director of the Department of Environmental Resources (DER) requests Revocation of Permit CNU-625-76, an approved certification of nonconforming use for a nursery and garden center (wholesale and retail) for Holland Gardens Nursery and Landscaping located at 3800 Sellman Road due to the discontinued use of the property as a nursery and garden center wholesale and retail.

F. **Surrounding Uses:**

North—	Residentially zoned and developed property in the R-R Zone as (Sellman Estates).
South—	Agricultural fields associated with the Beltsville Agricultural Research Center in the (R-O-S) Zone.
East—	Undeveloped parkland in the R-O-S Zone owned by The Maryland-National Capital Park and Planning Commission (M-NCPPC).
West—	Residentially zoned and developed property in the R-R Zone.

G. **Revocation of Certification Requirements:** The revocation of certification of a nonconforming use requires that certain findings be made. Section 27-245 of the Zoning Ordinance established the following specific requirements for revoking the certification of a nonconforming use:

- (a) **Upon a petition filed by the Director of the Department of Environmental Resources (or his designee), or upon its own motion, the Planning Board shall hold a public hearing to determine whether the certification of a nonconforming use should be revoked.**

Comment: In a letter dated March 12, 2013, the DER Director requested a public hearing for the Planning Board to revoke the certification of Certified Nonconforming Use Permit CNU-625-76.

- (b) **The Planning Board shall revoke the certification if it finds that either:**

- (1) **There was fraud or misrepresentation in obtaining the certification;**

Comment: There was no fraud or misrepresentation in obtaining the certification in 1977.

- (2) **A certified nonconforming use has been discontinued for a period of one hundred eighty (180) or more consecutive calendar days, unless the conditions of nonoperation were beyond the control of the owner or holder of the use and occupancy permit; or**

Comment: DER provided supporting documents including, but not limited to affidavits, photographs, the approved site plan and other evidence demonstrating both the expansion and change of use from the original approved certification of nonconforming use and the discontinued operation of a nursery, garden, and landscaping use for more than 180 consecutive calendar days for the period of January 4, 2012 through April 29, 2013. As of the writing of this staff report, there is no documentation from DER or the subject property owners that the conditions of nonoperation were beyond the control of the owner or the holder of the use and occupancy permit.

- (3) **Any applicable requirements of Subdivision 2 of this Division have not been met.**

Comment: There are no applicable requirements of Subdivision 2 (additional requirements for specific NCUs) of this Division that apply to the subject property.

- (c) **The Planning Board shall notify the Director of the Department of Environmental Resources (or his designee) of a revocation. The Director, in turn, shall revoke the use and occupancy permit for the nonconforming use.**

- (d) **The decision of the Planning Board may be appealed to the District Council in the same manner as an original certification (Section 27-244(f)(6)).**

Synopsis—By letter dated March 12, 2013, the DER Director provided background consisting of DER Property Standards Division's history of inspections of the subject property since its approval as a nonconforming use on February 24, 1977. Per the evidence provided, the subject property's use was improperly expanded in late 1990 to include a firewood operation. This was further documented by a 1992 decision of the Board of Appeals (No.11493).

Since 2010, DER has observed and sought relief for the expanded firewood operations. In 2011, DER petitioned the District Court of Maryland for Prince George's County for an injunction to cease all firewood operations. The Court entered Orders of Injunction in April and May of 2011. While inspecting the subject property for compliance, DER Inspectors began the photographic documentation of firewood operations at the subject property from January 4, 2012 through April 29, 2013. During this period, inspectors discovered that the subject property owners (a) continued to conduct unpermitted firewood operations; (b) failed to obtain the required permit to conduct firewood operations and (c) discontinued the use of the subject property as a "nursery and garden center wholesale and retail."

DER submitted the following documents as evidence in support of the revocation:

1. A letter dated May 22, 2013 summarizing the documentation of nonoperation.
2. Permit CNU-625-76 issued February 24, 177 to operate a nursery and garden center wholesale and retail for the subject property when it was zoned R-R to Mr. and Mrs. Arnold Leupen for 3800 Sellman Road.
3. A site plan dated May 6, 1976.
4. Aerial photographs from PGATLAS showing the property.
5. A Board of Appeals Order dated December 2, 1992, Appeal No. 11493.
6. Affidavits from DER Property Standards Division Inspectors Edelen, Twine, and Suniega.
7. Photographs from January 4, 2012 through April 29, 2013.

Comparisons of the approved site plan with the existing conditions, documented via PGATLAS aerial photo and the inspection photos, clearly demonstrate the discontinued use of designated planting and tree display areas.

The property owner(s), Mr. and Mrs. Leupen, were notified in writing, by letter dated May 7, 2013, of the June 25, 2013 (original) Planning Board hearing date. Mr. Arnold Leupen, visited the Planning Department on May 13, 2013 to request a later Planning Board hearing date, which was provided in writing. The request was granted and the hearing date moved without additional notification to any of the parties (Mr. Leupen or Mr. Ortiz). Zoning Staff did speak with Mr. Leupen on June 26, 2013, to discuss the current Planning Board Hearing date and the submission of documentation to contradict the claim of non-operation of a nursery, garden and landscaping center (wholesale and retail) at the subject property. Mr. Leupen indicated that he should have been notified of the new Planning Board Hearing date prior to the public posting of signs on his property. Mr. Leupen also indicated that he would provide staff with supporting documentation demonstrating continuous operation of a nursery, garden and landscaping center (wholesale and retail) at the subject property. As of the writing of this staff report Zoning Staff has not received any supporting documents from Mr. Leupen.

DISCUSSION

The 1977 approved nonconforming use limited the use of the subject property for “a nursery and garden center wholesale and retail.” The evidence provided demonstrates that this use has ceased on the subject property. DER has conducted 32 inspections of the subject property during the period of January 4, 2012 through April 29, 2013. During this time, there has been no indication of the subject property being used as a “nursery and garden center wholesale and retail.” The 1992 decision by the Board of Appeals provides further evidence that the subject property has been used for firewood operations and that this unpermitted use expanded over a 20 year period.

The conditions of the subject property’s nonoperation as a “nursery and garden center wholesale and retail,” was within the control of the property owner or holder of the use and occupancy permit. There is no evidence that any action was taken to address the repeated violations. Furthermore, as detailed in the March 12, 2013 letter from the DER Director, “All enforcement actions taken by DER against the subject property were related to the unpermitted firewood operations.” The subject property/owners/ holder of the use and occupancy permit was always afforded the right to operate within the scope of approved Nonconforming Use Permit CNU-625-76, as long as that use was as a “nursery and garden center wholesale and retail.” Given the discontinued use of the subject property in this manner, revocation of the nonconforming status for the subject property is consistent with the requirements of the Zoning Ordinance.

CONCLUSION

Section 27-245 of the Zoning Ordinance provides specific requirements for revocation of a certified nonconforming use that must be presented to demonstrate that the use has ceased operation for more than 180 consecutive calendar days. DER has submitted the Board of Appeals Order dated December 2, 1992, photographic evidence (January 2012 to April 2013), and the original site plan and approved permit dated February 24, 1977. Based on the evidence submitted by DER, together with the lack of contradictory evidence from other sources, staff recommends that the Planning Board revoke Nonconforming Use Permit CNU-625-76 based upon the non-operation of a garden, nursery, and landscaping (wholesale and retail) use for a period of more than 180 days.