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Certification of Nonconforming Use 9579-99U

Application	General Data
Project Name: Herman Property Location: 4715 Oliver Street Riverdale Park, Maryland Applicant/Address: Michael Herman 4715 Oliver Street Riverdale Park, Maryland 20737	Date Accepted12/1/99
	Planning Board Action LimitN/A
	ZHE Hearing DateN/A
	Plan Acreage6,300 sq. ft.
	ZoneR-55
	Dwelling Units2
	Square FeetN/A
	Planning Area68
	Council District3
	MunicipalityRiverdale Park
	200-Scale Base Map207 NE 4R

Purpose of Application	Notice Dates
Certification of a nonconforming two-family dwelling in the R-55 Zone.	Adjoining Property OwnersN/A (CB-15-1998)
	Previous Parties of Record N/A (CB-13-1997)
	Sign(s) Posted on Site8/18/00
	Variance(s): Adjoining Property OwnersN/A

Staff Recommendation			Staff Reviewer	Joe Del Balzo
APPROVAL	APPROVAL WITH CONDI- TIONS	DENIAL	DISCUSSION	
		X		

September 13, 2000

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Joe Del Balzo, Planner Coordinator, Subdivision Section

SUBJECT: **Certified Nonconforming Use Application No. 9579-99U**

REQUEST: **Certification of a Nonconforming 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 301-952-3280 for additional information.

FINDINGS:

- A. Location and Field Inspection: The property is located on the south side of Oliver Street in the Town of Riverdale Park. It is developed with a building originally constructed as a single-family dwelling that has been converted to a two-family dwelling. It is surrounded by single-family detached dwellings in the R-55 Zone.
- B. History: The property is shown in the R-55 Zone on the November 29, 1949, Zoning Map. It has remained in the R-55 Zone since.
- C. Master Plan Recommendation: The property is found in Planning Area 68. The *1994 Approved Master Plan for Planning Area 68* recommends the property for single-family detached land use, in recognition of the area's long standing development pattern. The companion Sectional Map Amendment retained the R-55 designation.
- D. Request: The applicant requests certification of a nonconforming two-family dwelling in the R-55 Zone. Two-family dwellings were permitted until September 20, 1988, when the Zoning Ordinance was amended prohibiting them in the R-55 Zone. The applicant must demonstrate that the use began prior to September 20, 1988, and that it has continued to exist with no break in operation of more than 180 days.
- E. 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.**

F. Documentary Evidence in Support: The following evidence has been submitted by the applicant:

1. Affidavit of Ademola Oreagba, not notarized: Mr. Oreagba affirms that he purchased the property on May 28, 1998 and sold it on May 17, 1999. Mr. Oreagba affirms that he purchased the property to rehabilitate the existing two-family and resell it. He states that he did major remodeling, but that, with the exception of adding a powder room, he did not do any structural work in either the larger portion of the house or the separate smaller apartment. He affirms that there were front and rear entrances to the smaller apartment when he acquired the property.
2. Affidavit of Karen L. Ritchie, notarized August 19, 1999: Ms. Ritchie affirms that she owned the property with her husband from 1981 to 1998 when it was sold to Mr. Oreagba. She affirms that she began dating Mr. Ritchie (deceased) in 1977, at which time he owned the property. At that time, she notes that the building was a two-family dwelling and that the separate apartment was leased and occupied. She affirms that it has been used as a separate apartment, with a separate entrance for more than 22 years.
3. Affidavit of Paul F. Gleis, notarized July 25, 2000: This affidavit in support of the application is by far the most compelling. Mr. Gleis affirms that he was born in 1922 and lived from 1922 to 1946 at 4711 Oliver Street, two doors down from the subject property. He states that he moved out of the home in 1946 and moved back in 1972.

He remains a resident there today. Mr. Gleis's affidavit provides a list of most of the owners of the property beginning about 1940. He states that it was around 1940 that the home was converted to a two-family dwelling. He affirms that the property has been used continuously since then as a two-family dwelling. (Unfortunately, he also affirms that the property may have been used as a boarding house during the time Mr. Ritchie owned it; apparently Mr. Ritchie leased individual rooms in the main house. While having a roommate is not illegal, this description approaches a boarding house, which has never been allowed in the R-55 Zone.) In

any event, Mr. Gleis provides persuasive evidence that the use as a two-family dwelling predates September 1988 and has been continuously operated as such.

4. PEPCO bills, dated June 2000: These electric bills show that from May 5 to June 6, 2000, there were two meters on the property.

G. Documentary Evidence in Opposition: The following evidence has been submitted by the Mayor of Riverdale Park.

1. Violation Notice, dated July 25, 1997, from Town of Riverdale Park Code Enforcement: The Violation Notice stated that the property was in violation of Chapter 68 of the Code of the Town of Riverdale Park. Tall grass, overgrown brush, a dead shrub and tree stump were present on the property.
2. Violation Notice, dated August 7, 1997, from the Town of Riverdale Park Code Enforcement: The Violation Notice reiterated the same violation.
3. Violation Notice, dated August 19, 1997, from the Town of Riverdale Park Code Enforcement: The Violation Notice reiterated the same violation.
4. Letter, Anderson to Ritchie, dated August 20, 1997: This was a handwritten letter from the Town Code Enforcement Office to the property owner. This letter informed the owner that if action was not taken to correct the violations, the Town would clean up the property and charge the property owner.
5. Violation Notice, dated May 14, 1998, from the Town of Riverdale Park Code Enforcement: This was another violation notice regarding tall grass and weeds. This notice was addressed to Wendover Funding, Inc.
6. Photograph, dated May 14, 1998: This photograph shows a number of notices posted in the window. However, it is not possible to read the notices or to determine if they are, in fact, notices at all.

H. Discussion: The record in this application is rife with incompleteness. Neither the information for nor the information against is adequate to determine whether or not this property was a two-family dwelling prior to September 1988 and whether or not it has operated continuously. Notwithstanding the inadequacy of the documentary evidence in opposition which appears to imply a break in operations, this application falls short of meeting the requirements for approval. The evidence is insufficient to demonstrate conclusively that the property was not used for more than 180 consecutive days. It is not the burden of the opposition to demonstrate that there was a break in operation, it is the burden of the applicant to demonstrate that there has not been a break. Staff finds that the evidence in the record demonstrating continuous operation is severely lacking.

Two of the three affidavits in the record are from previous owners of the property. Obviously, these affiants have personal knowledge of the property, but they also may have financial ties in obtaining the requested certification. The third affidavit is from a neighbor who affirms his knowledge that the building was a two family dwelling during the required period. But no hard documentary evidence of

the kind suggested by the Zoning Ordinance - business records, tax records, utility records - have been submitted demonstrating the origin and continuity of the use.

Nonconforming use applications are often difficult because the burden, so squarely laid at the applicant's feet, is generally onerous. Business records rarely reach back as far as required, and affidavits must be used to fill in gaps in missing data. However, some documentary evidence must be available. In this case, the applicant has supplied the record with two PEPCO bills from July 2000. These bills do nothing to support either the claim that the use began prior to September 1988 or that it has operated continuously.

CONCLUSION:

Staff finds that there has been, from time to time, an operating two-family dwelling on this property. But with the incompleteness of the record, staff can not be certain that there were no breaks of more than 180 days. Based on a lack of sufficient documentary evidence, staff is compelled to recommend DENIAL of CNU 9579-99U.