

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-10965-2008 requesting certification of a nonconforming use (two-family dwelling in the R-55 Zone) in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on December 11, 2008, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, known as 409 Ventura Avenue, is located on the west side of Ventura Avenue approximately 350 feet south of Central Avenue. The property is zoned R-55. There is an existing two-family dwelling on the property which the applicant seeks to have certified as a nonconforming use.

- B. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	R-55	R-55
Use(s)	Two-family dwelling	Two-family dwelling
Acreage	0.23	0.23

- C. **History:** In 1928, the property was zoned Residential 'A' (equivalent to the R-55 Zone). In 1949, the property was rezoned to R-55, which is the present zoning. Changes to the Zoning Ordinance from July 29, 1986 to September 20, 1988, mistakenly permitted two-family dwellings in the R-55 Zone. Prince George's County District Council Bill CB85-1988 corrected the mistake. Therefore, all two-family dwellings permitted in the R-55 Zone during that period became nonconforming uses.
- D. **Master Plan Recommendation:** The 1986 *Approved Master Plan for Suitland-District Heights and Vicinity, Planning Areas 75A and 75B* recommends a medium suburban use for the subject property. The sectional map amendment retained the property in the R-55 Zone. The 2002 *Prince George's County Approved General Plan* shows the property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.
- E. **Request:** The applicant requests certification of a two-family dwelling in the R-55 Zone. The R-55 Zone permits only 1 one-family detached dwelling on a lot. The applicant has stated that the property is now and has been consistently used as a two-family dwelling unit.

F. Surrounding Uses:

The site is surrounded by the following uses:

- North:** Single-family homes in the R-55 Zone
- East:** Ventura Avenue and single-family homes in the R-55 Zone
- South:** Homes under construction in the R-T and R-55 Zone
- West:** Auto repair business in the R-55 Zone

- G. Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate the pertinent zoning regulation 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 of the Zoning Ordinance sets forth the following specific requirements for certifying a nonconforming use:

- (a)(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) or the District Council certifies that the use is nonconforming and not illegal.**
- (b)(1) The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**
- (b)(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 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 applicant has submitted a deed showing that he bought the subject property in 2005. At that time, the subject property was being used as a two-family dwelling and there were two tenants renting the property. The previous owner did not obtain certification of the two-family dwelling unit when it became a nonconforming use on September 20, 1988. When the applicant applied for a use and occupancy permit in 2006, the Permits Division did not find any prior permits for the subject property. Therefore, in accordance with Section 27-244(f), the Planning Board must determine whether, in fact, the use was 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. A copy of an October 29, 1987, permit (9045-87-RGU) for a 24-foot by 34-foot addition to the dwelling on the site. The applicant contends that it was then that the dwelling became a two-family dwelling, which is plausible. This was during that time from July 29, 1986 and September 20, 1988, when two family dwellings were permitted in the R-55 Zone, which would show the use was legally established prior to the date it became nonconforming.
2. A copy of a variance approved by the Board of Zoning Appeals for a one-foot variance to the side yard requirement. The variance was approved on June 23, 1987, as part of the above-mentioned large addition built on the house in 1987.
3. Lease documents dated June 1, 2005, for two separate units on the subject property.
4. A rental housing license for the site issued September 29, 2006. The license remains valid until September 29, 2008. The license is for a single unit.
5. A notarized affidavit dated February 6, 2007, from a resident living 0.4 miles from the property. The affidavit states that the subject property has been used as a two-family dwelling and it has never been used as single-family dwelling since the addition was built

on the original dwelling in 1987. It is not explained how this individual has had day-to-day knowledge of the use of the property over the last 11 years.

6. Additional evidence was presented at the December 11, 2008 Planning Board hearing including proposals and work orders for work on the site covering the years 2005-2007 and a rental license application for two units from 2006.

Section 27.107.01, Definitions, of the Zoning Ordinance defines:

A two-family dwelling as either a building containing two dwelling units arranged one on top of another or two attached buildings arranged side by side.

A nonconforming building or structure is not in conformance with a requirement of the zone in which it is located provided that the requirement was adopted after the building was constructed, the building was constructed after the requirement was adopted, and a use and occupancy permit was obtained to validate permits issued in error.

A nonconforming use is defined as a use of any building, structure or land that is not in conformance with a requirement of the zone in which it is located provided that the requirement was adopted after the use was lawfully established, the use was established after the requirement was adopted, and the District Council has validated a use and occupancy permit issued in error.

In this case, a house has been on the property since 1940. The current zoning for the property has been in existence since 1949. Two-family dwellings are not currently permitted in the R-55 Zone, but were for a two year period (1986–1988). The applicant has submitted documentation suggesting that the two-family dwelling was created by an addition to the house which was legally constructed in 1987. It continues to have two separate entrances, kitchens and bathrooms to this day.

This is the third property owned by the applicant for which the certification of a two-family dwelling has been requested. The applicant is thus aware of the types and amount of evidence required to show continuity. The applicant has submitted a single sworn affidavit from a property owner at some distance from the site stating that the property has been continuously used as a two-family dwelling. The affidavit indicates 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 was submitted. The applicant has also submitted a boundary survey showing the property and building location and dimensions.

CONCLUSION:

It is required that the documentary evidence provided by the applicant clearly show two things: legal establishment of the use, and continuity of use. The Board is satisfied with the evidence provided for the former, but finds the evidence of the latter insufficient to make the required finding.

The evidence of continuity relies upon a single affidavit from an individual who lives blocks away from the site. The subject property is located at the end of a street, not visible to casual passersby or from the declarant's residence. The applicant has not been able to produce other documentation such as business records, public utility installation or payment records other than two leases covering the time period 2005–2006. In our view, this falls short of clear evidence of continuity of use since 1988. Due to the dearth of evidence of continuity, the Board is compelled to deny the subject application, CNU-10965-2008.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and DENIED the above-noted application.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Cavitt, seconded by Commissioner Clark, with Commissioners Cavitt, Clark and Vaughns voting in favor of the motion, and with Commissioners Squire and Parker opposing the motion at its regular meeting held on Thursday, December 11, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 8th day of January 2009.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

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