



PGCPB No. 12-91

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File No. CNU-9993-11

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-9993-11, Hovermale Golf Driving Range requesting certification of a nonconforming use for a golf driving range 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 September 13, 2012, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located on the east side of Livingston Road, just west of Livingston Road's intersection with Indian Head Highway (MD 210). The subject property consists of approximately 15 acres, known as 9011-9013 Livingston Road, Fort Washington, Parcel 80. It is improved with a one-story frame golf club house, two frame shelters, 21 practice tee areas, and requisite parking all located on the C-M-zoned (Miscellaneous Commercial) section of the property. The C-O (Commercial Office) and R-R (Rural Residential) section of the property is used as open space with approximately 72 feet of golf ball netting for the golf driving range.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	C-O, C-M, C-S-C, R-R	Unchanged
Acreage	±3.89	15.47
Use(s)	Commercial	Unchanged

C. **History:** The existing golf driving range was established in 1954. The subject property was brought into the Maryland-Washington Regional District on November 20, 1957, and placed in the C-2 (General Commercial, Existing) and R-R Zones. At that time, a golf driving range required a special exception to be permitted in the R-R Zone and was permitted in the C-2 Zone. Thus the use became nonconforming in 1957. On July 24, 1984, the property was rezoned to the C-M and R-R Zones. Prince George's County Planning Board (PGCPB) Resolution No. 86-139 approved nonconforming use application 2666-86-CGU citing the use preceding the property's adoption into the Maryland-Washington Regional District and continuous use to the present (April 24, 1986). Certification of a nonconforming use as a golf driving range was granted for 3.89 acres of the property zoned R-R per Section 27-244 of the Zoning Ordinance. Per comments from the Permit Review Section, Permit 2666-86-CGU/01 was approved by The Maryland-National Capital Park and Planning Commission (M-NCPPC) as a certified nonconforming golf range on May 29, 1986. Per the Department of Environmental Resources (DER), Community Services Division, the certificate of occupancy and building permit was never issued and was subsequently abandoned. Due to the fact that Building Permit 2666-86-CGU/01 was never issued, the site must again be certified as a nonconforming use.

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- D. **Master Plan Recommendation:** The 2006 Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area placed this property in the Henson Creek Transit Village with a designation of mixed-use development.
- E. **Request:** Certification of the 15.47-acre property located in the R-R Zone with an existing golf-driving range that was established in 1954. The property was originally zoned C-2 and R-R. The development regulations were changed or adopted after the use was lawfully established and the complex therefore became nonconforming.
- F. **Surrounding Uses:** The site is surrounded by the following uses:
- North and East—** Property zoned Commercial Shopping Center (C-S-C) and Rural Residential (R-R).
- South and West—** Property zoned Commercial Miscellaneous (C-M) and Residential Open Space (R-O-S).
- 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 the use 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) **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 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**
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the commencing date and continuous existence of the nonconforming use;

- (B) Evidence that the nonconforming use has not ceased to operate 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 of 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: According to the applicant's documentation, the property at 9011-9013 Livingston Road was in operation as a golf driving range prior to 1957 when the property was brought into the Maryland-Washington Regional District and placed in the C-2 and R-R Zones. A golf driving range is a permitted use in the C-2 Zone, but a special exception is required in the R-R Zone. The property was later rezoned from C-2 to C-M in 1984. The R-R zoning did not change. The subject property has continuously operated as a golf driving range since the last zoning change in 1984. When the applicant applied for a use and occupancy permit in 2011, the Planning Information Services staff could not verify that 9011-9013 Livingston Road operated in accordance with the requirements of the Zoning Ordinance because original use and occupancy permit records were not available. Therefore, in accordance with Section 27-244(f) of the Zoning Ordinance, 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. PGCPB Resolution No. 86-139 approving certification of the property as a nonconforming use (Exhibit 1).

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2. A commercial lease agreement dated April 16, 1986, between Bruce and Orpha Hovermale and John H. Johnson for 9013 Livingston Road, Fort Washington, Maryland (Exhibit 2).
3. A notarized letter from Glen M. Miller dated November 2, 2010 citing continuous operation of the golf driving range as Pro Glen Inc. since April 15, 1989 (Exhibit 3).
4. A sub-lease agreement between John H. Johnson and Glen Miller (Exhibit 4).
5. Property Deeds (Exhibit 5).
 - a. Dated September 2, 1953 between Bruce and Orpha Hovermale and the McNamara/Sansbury heirs.
 - b. Dated November 11, 1994 between Carl Hovermale and the Carl W. Hovermale Revocable Trust.
6. An Affidavit of Continuous Use (not notarized) providing evidence of the property being used as a golf driving range for over 20 years (Exhibit 6) from the following:
 - a. Robert Bourgeois
 - b. Donald Smolinski
 - c. Louis Ream, Jr.
 - d. Brian DeMarr
 - e. Delores McDonald
 - f. John Faw
 - g. Thomas Grove
 - h. E. David Warner
 - i. John Raymond Tilch
 - j. Charles Larry Hunter
7. An affidavit (not notarized, but stamped with a legal firm's name and address) dated March 12, 2011 from Carl W. Hovermale, property owner, citing continuous use and operation of the subject property (Exhibit 7).
8. A use and occupancy permit application for 9011 Livingston Road (Exhibit 8).

DISCUSSION

The above evidence which consists of PGCPB Resolution No. 86-139 approving certification of the property as a nonconforming use, property deeds, affidavits from local residents, lease agreements, and other such evidence that documents the existence of a fully functioning business, supports the applicant's claim that 9011-9013 Livingston Road has been in continuous operation as a golf driving range since 1954. The nonconforming use began in 1957 when the subject property was brought into the

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Maryland-Washington Regional District and placed in the C-2 and R-R Zones. At that time, a golf driving range was a permitted use in the C-2 Zone, while a special exception was required for the use in the R-R Zone. A zoning change occurred in 1984 when the portion of the property in the C-2 Zone was rezoned to C-M. The golf driving range was still a permitted use and the property continued to be used as such. In 1986, the Planning Board subsequently approved PGCPB Resolution No. 86-139 granting nonconforming use certification to 3.89 acres of 9011-9013 Livingston Road zoned R-R. The record from the previous certification indicates that the golf driving range use operated on 3.89 acres of the subject site zoned R-R. There is no explanation in the resolution as to why only 3.89 acres was certified. Also, a use and occupancy permit was never formalized for what was permitted per Resolution No. 86-139. However, the use and operation of 9011-9013 Livingston Road as a golf driving range continued to the present.

The applicant is again requesting certification of the subject use, but the size of the property used in the R-R Zone has changed from 3.89 acres to 15.47 acres. Clearly, the applicant has 15.47 acres and the subject use occupies a portion of this acreage. However, when the original request for certification of a nonconforming use was made in 1986, the applicant indicated that the golf driving range use operated on a portion, later determined to be 3.89 acres, of the 15.47-acre parcel. The staff report for the original certified nonconforming use (CNU) application shows the boundaries of the existing driving range (PowerPoint Slide 9). The applicant has not explained the difference in the boundaries, and the facts presented in the new certified nonconforming use application (except for the acreage) are essentially the same as the original application. Therefore, if this is a request to recertify this use in accordance with the Planning Board's earlier decision, then the certification should again be for 3.89 acres in the R-R Zone. In order to expand the boundaries of this use beyond the 3.89 acres, a special exception must be approved.

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 APPROVED 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 Geraldo, seconded by Commissioner Shoaff, with Commissioners Geraldo, Shoaff, Washington and Hewlett voting in favor of the motion, and with Commissioner Bailey absent at its regular meeting held on Thursday, September 13, 2012, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 4th day of October 2012.

Patricia Colihan Barney
Executive Director

By *Jessica Jones*
Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY.

Matthew Mills
M-NCPPC Legal Department

Date 9/20/12