

## ADMINISTRATIVE DECISION

**Herbert Newborn**  
**701 Cecil Avenue North**  
**Millersville, MD 21108**

**ASSESSMENT DISTRICT: FORTH**  
**NC NUMBER: 2005-0104-N**  
**PREMISE: 701 Cecil Avenue North**  
**Millersville, MD 21108**

This Administrative Decision is the direct result of an application by Herbert Newborn to register property located at 701 Cecil Avenue North, Millersville, MD as a nonconforming use pursuant to Article 27, "Zoning" Section 15-101 of the Anne Arundel County Code. Such registration is a prerequisite to obtaining a Zoning Certificate of Use, as required by Article 27, Section 2-202, and to apply for a Special Exception to expand a nonconforming use under the provisions of Article 27, Section 15-103.

The administrative process in this case was undertaken in accordance with the provisions of Article 27, Section 15-101, which charges the Office of Planning and Zoning with the responsibility of determining the lawful nonconforming status of each applicant's operation. This has resulted in the compilation of documents, maps, photographs and other material supplied to or collected by this Office. The material supports the following findings of fact:

The subject site consists of one acre, more or less. It is located 150 feet on the east side of Cecil Avenue, approximately 0 feet south of Coleman Lane. The property is shown as Parcel 0457, Block 11 on Tax Map 30. The site is further described in a deed recorded in the Anne Arundel County Land Records at Liber 9817, Folio 462. It has been zoned RLD-Residential Low Density District since the adoption of comprehensive rezoning for the Odenton Small Area Plan effective June 21, 2004. The site is currently utilized as a multi-family dwelling of four units with a basement. The following uses and facilities are depicted on a site plan dated June 1992 as follows:

### Nonconforming Use

- A two story framed dwelling with a basement that measures 76' x 30', and contains approximately 3360 square feet of floor area.
  - Apartment # 1 contains approximately 1200 square feet of floor area.
  - Apartment # 2 contains approximately 1080 square feet of floor area.
  - Apartments #3 & # 4 contain approximately 540 square feet each of floor area.
  - Basement contains approximately 1200 square feet and is used for storage.

In order to qualify as lawfully nonconforming, each use of the subject property must satisfy the provisions of Article 27, Title 15 of the 2005 Zoning Ordinance. Article 27, Section 15-104 requires that a lawful nonconforming use terminate when the use ceases operation for twelve consecutive months or when the scope of the use is so significantly reduced during the 12-month period as to change its nature of character. Section 15-101 (c) states that there is a rebuttable presumption that a use in existence continuously for a period of 30 years is a nonconforming use.

## **ZONING HISTORY**

At the time of the adoption of the 1952 Zoning Ordinance, the subject property was zoned A-Agricultural District. Section 13-337.1 allows one-family or two-family dwellings as a permitted use. However, a four-unit multi-family dwelling was not permitted.

As a result of the first comprehensive rezoning for the Fourth Assessment District effective October 15, 1973, the subject property was classified as RA- Agricultural Residential District. Section 13-303.1 of the 1971 Zoning Ordinance did not allow multi-family dwellings.

With the second comprehensive rezoning for the fourth Assessment District effective June 12, 1989, the subject property was reclassified as RLD-Residential Low Density District. Section 2-2A-03 of the 1985 Zoning Ordinance did not allow multi-family dwellings.

The most recent comprehensive rezoning is the result of the Odenton Small Area Plan effective June 21, 2004, the RLD-Residential Low Density Zoning designation continued on the subject property. Section 27-4-106 of the 2005 Zoning Ordinance does not allow multi-family dwellings.

Section 27-15-101 (c) states that there is a rebuttable presumption that a use in existence continuously for a period of 30 years is a nonconforming use. Therefore, the applicant has the burden of proof to show that a four-unit multi-family dwelling existed prior to July 1, 1952 without cessation in use of 12 months to the present date.

## **EVIDENCE**

The following evidence was submitted by the applicant or collected by this office to substantiate the continued use of the subject property:

1. Deed, liber 9817, folio 462, dated June 9, 2000, conveyed the subject property to Herbert Newborn.
2. Letter From Baltimore Gas and Electric Company dated April 30, 2005 stating meters were installed as follows:
  - 701 Cecil Avenue - November 5, 1963
  - 701 Cecil Avenue, apartment 1 – March 1, 1980
  - 701 Cecil Avenue, apartment 2 – October 1, 1980
  - 701 Cecil Avenue, apartment 3 – November 5, 1963
3. Maryland State Tax Assessment worksheets dated 1971 through 1994, 2002 and 2005, reflecting assessments for a one family dwelling with two apartments attached, the notes described a 30' x 40' structure with a full basement and a 30' x 36' attached garage with a 2<sup>nd</sup> story consisting of two apartments, each measuring 540 square feet.
4. Appraisal (undated) reflecting a two level structure with 4 units totaling 2280 square feet of living space.

5. Two photographs, the first dated 1963 showing a one level structure and the second, dated 1978 showing a one level structure with a two level structure attached.

6. Anne Arundel County permits, as follows:

- Permit number 03687, dated March 19, 1963 allowing a 26' x 42' single family dwelling with a 20' x 22' cellar.
- Permit number 00214, dated December 16, 1963 allowing private garage and breezeway, no dimensions mentioned.
- Permit number B004544, dated March 29, 1977 allowing an unattached garage measuring 30' x 40'.
- Permit number 4745, dated November, 1978 allowing a one and a half story garage and breezeway measuring 36' x 30'.

7. Aerial photographs reviewed by this office for the years 1970 through 2002 depict the existing improvements. The flight lines are as follows:

1970 (13-30)	1977 (14-38)
1980 (09-32)	1984 (12-43)
1995, 1998, 2000 and 2002 (map optics)	

- The aerial photograph for 1962, flight line 10-135, depicted an unimproved lot.

## DISCUSSION

Based on the evidence presented by the applicant, it appears that a lawful nonconforming use does exist on the subject property. However, the evidence is not substantial to show that a four-unit dwelling existed on July 1, 1952 and continued without cessation of more than one year to the present date. The 1962 aerial photograph depicted an unimproved lot, which indicates the use did not exist. This office does recognize the two-unit dwelling lawful. Documentation from BGE, and MD Tax Assessment records verifies the continuous use.

Therefore, it is the decision of the Office of Planning and Zoning that the extent of the use is as follows:


- Apartment # 1 measuring 30' x 40' with 1200 square feet of floor area.
- Apartment #2 measuring 33' x 36' with 1080 square feet of floor area

Article 27, Section 15-101 (d) requires the Office of Planning and Zoning to determine whether the use may be registered as a nonconforming use and to classify the overall nonconforming use of the property based on the zoning district in which that use is allowed. If the use is specified in more than one zoning district, the Office of Planning and Zoning shall classify the use based on what it considers to be the most appropriate district. Therefore, it is the decision of this Office that the nonconforming use of the subject property is hereby classified as an R2-Residential District type nonconforming use.

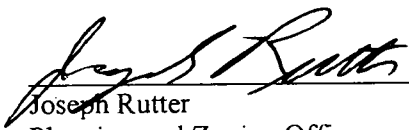
All uses of the subject site not specifically permitted by this decision must conform to the requirements set forth in the Anne Arundel County Zoning Ordinance for an RLD-Residential Low Density District.

This Administrative Decision shall be binding unless appealed to the Anne Arundel County Board of

Appeals within thirty- (30) days, as provided by Article 3, Section 1-103 (Appendix B, Rules of the Board of Appeals, Rule 5) of the Anne Arundel County Code (1985).

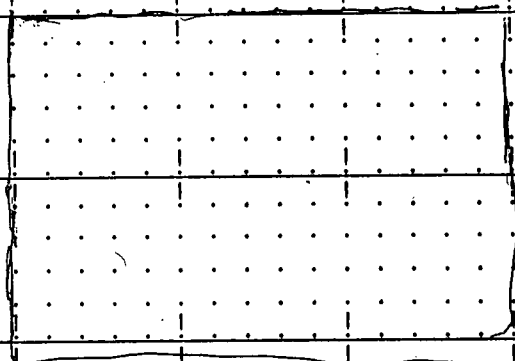
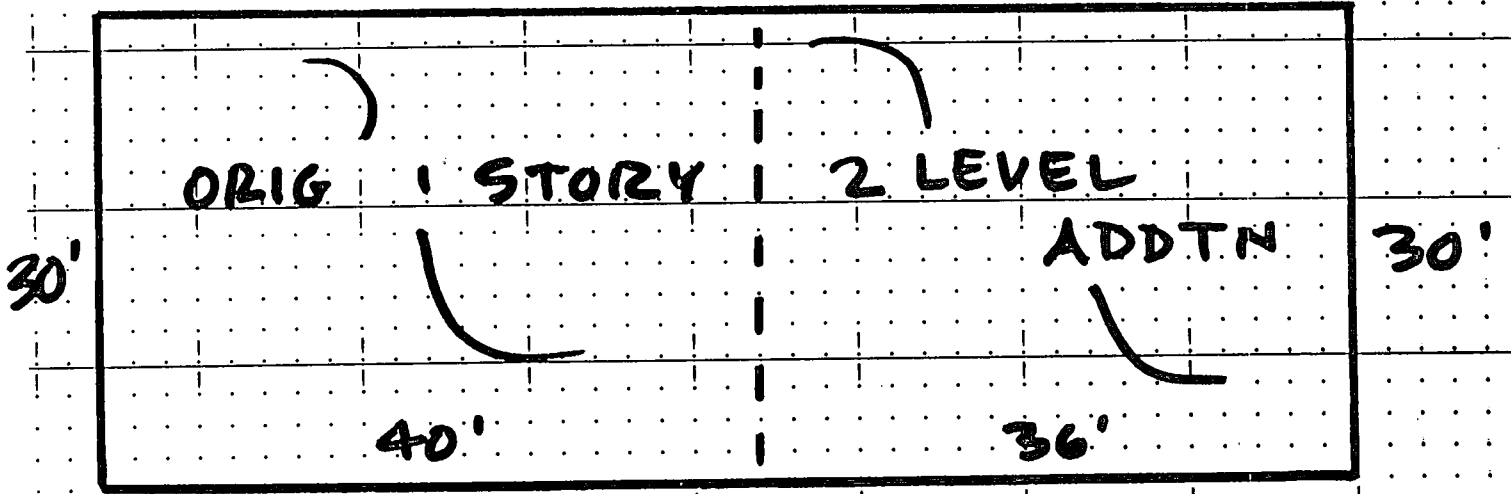
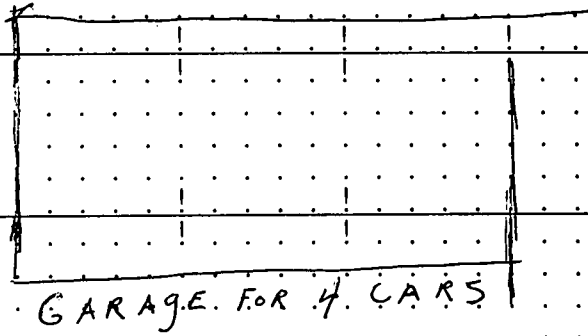
  
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Debra Falconer, Planning Technician II  
Office of Planning and Zoning

6/7/05  
Date

  
\_\_\_\_\_  
Joseph Rutter  
Planning and Zoning Officer

6/7/05  
Date

BUILDING SKETCH



DRIVEWAY ASPHALT  
4 CAR AND PARKING