



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

PGCPB No. 2022-28

File No. CNU-12648-2015

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-12648-2015, 8204 Bellefonte Lane Apartments, requesting certification of a nonconforming use for an existing six-unit apartment building constructed in 1960, which predates the zoning annexation, 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 February 24, 2022, the Prince George's County Planning Board finds:

1. **Request:** The applicant is requesting certification of a nonconforming use for an existing six-unit apartment building constructed in 1960, which predates the zoning annexation. The nonconforming status commenced on April 24, 1961, when the property was annexed into the Maryland-Washington Regional District with a Rural Residential (R-R) zoning designation. Based on the current standard for the R-R Zone, the Prince George's County Zoning Ordinance prohibits more than one dwelling unit on a single lot, and the existing apartment building contains six.

There are no previous use and occupancy (U&O) permits on record for the site. The documentation submitted by the applicant shows that the building was in continuous use from 1960 until January 2012, when the property was vacated and listed for sale. The building went without a tenant from January 2012 until May 2014, for a total of approximately 28 months. The applicant is requesting that the Prince George's County Planning Board certify the nonconforming use.

2. **Location and Field Inspection:** The subject property, addressed as 8204 Bellefonte Lane, is located on the north side of Bellefonte Lane, approximately 2,500 feet northeast of the intersection of Old Alexandria Ferry Road and Bellefonte Lane. The site is described as part of Lot 45, containing 20,000 square feet, recorded among the Prince George's County Land Records in Liber 34759 folio 410. The division of the part of Lot 45 included in this application was legally established prior to 1981 (Liber 3828 folio 905). The site is developed with a two-story brick apartment building, with a basement oriented toward the site's frontage on Bellefonte Lane. An 8-foot-wide asphalt driveway exists along the west side of the building, six unmarked gravel parking spaces are located in the front of the building, and an existing concrete slab is located in the backyard of the apartment building, with a concrete walkway that leads to the rear entrance. A 6.1-foot-wide concrete walkway, from the site's frontage on Bellefonte Lane, leads to the main entrance of the building.
3. **Surrounding Uses:** The site is surrounded by single-family detached residential development to the west and north, and two multifamily apartment buildings to the east, all in the R-R Zone. Bellefonte Lane abuts the subject site to the south. Of the two existing apartment buildings to the east of the subject property, 8208 Bellefonte Lane was certified as a nonconforming use in 1984,

after demonstrating continuous use of the apartment building since 1958. Subsequently, Special Exception SE-3744 was approved to expand the five-unit apartment building to six units. The apartment building at 8212 Bellefonte Lane was the subject of a Permit Issued in Error (ERR-255), having been issued rental licenses after expanding from five to six units, and was subsequently certified as a nonconforming use in 2016 after approval of ERR-255.

4. **History:** The following information was derived from documentation that was submitted by the applicant and from the permit history of the site, as it relates to the use.

- a. **1960**—According to the Maryland State Department of Assessments and Taxation database, the building was constructed in 1960.
- b. **April 24, 1961**—The property was annexed into the Maryland-Washington Regional District with the R-R-zoning designation, which prohibits the multifamily use.
- c. **1960 to January 2012**—The property was occupied and used as multifamily rental housing, according to the applicant's affidavit.
- d. **July 1970 to March 2010***—Rental licenses were issued for the building by the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) from 1970 to 2010. The last rental license issued to the owner preceding the applicant in this case expired on March 27, 2010.

***Note:** Prior to 1970, no rental license was required for rental properties.

- e. **January to February 2012**—According to the applicant's affidavit, the last tenant vacated the building in January 2012, and the building was boarded up and listed for sale, per estate trust attorneys for Seabird Mortgage, LLC in February 2012.
- f. **December 2012**—The applicant, Mr. Joseph E. Myers Sr., owner and managing member of 8204 Bellefonte Lane, LLC, purchased the property.
- g. **March to November 2013**—The applicant applied for various permits with DPIE, for general interior renovations and to upgrade the heating and plumbing for each apartment unit.
- h. **May 2014**—Final inspections were approved by DPIE for the various interior renovation permits.
- i. **May 2014 to August 2014**—All six apartment units in the building were rented, and the building became fully occupied
- j. **November 12, 2014**—The applicant applied for a U&O Permit (41965-2014-U) for the six-unit multifamily apartment building. Upon reviewing the permit, the applicant was notified by the Maryland-National Capital Park and Planning Commission (M-NCPPC)

Permit Review staff on November 18, 2014 that certification of a nonconforming use is required to be approved by the Planning Board, in accordance with Section 27-244(f) of the Zoning Ordinance, because there was no prior issued U&O permit for the multifamily dwellings.

- k. **December 27, 2014**—The applicant was issued a rental license for a six-unit multifamily dwelling by DPIE, which was valid for two years.
- l. **April 2, 2015**—For the second time, the applicant submitted a U&O Permit application (12648-2015-U) for the subject property. Review comments were provided to the applicant by M-NCPPC Permit Review staff, consistent with the previous determination that a certification of nonconforming use (CNU) by the Planning Board would be required.
- m. **September 2, 2016**—The Prince George’s County Code Enforcement authorities issued a violation citation (Case No. Z-349-9/F3-17) for use of a building, structure, or land without a legal U&O permit, with a corrective action date of September 17, 2016.
- n. **December 27, 2016**—The applicant was issued a rental license for the building, with an expiration date of December 27, 2018.
- o. **November 15, 2017**—A consent order to enforce compliance with County Code (Case No. SP05-02-5606-17) was filed with the District Court of Maryland for Prince George’s County, requiring the applicant to comply with the outstanding violation within 60 days.
- p. **February 15, 2018**—The application was continued indefinitely by the Planning Board.
- q. **November 4, 2019**—The applicant filed U&O Permit 51768-2019-U.
- r. **Present Day**—The applicant submitted an affidavit, as well as rental license agreements that affirm the building has been fully leased and occupied with new residents from August 2014 to present day.

5. **Site Data Summary:**

Zone:	R-R/M-I-O
Acreage:	0.46
Use:	Multifamily Residential
Total Units:	6
Site Density:	13.07 dwelling units/acre
Lot Coverage:	17.5%

6. **Certification Requirements:** Section 27-107.01(a)(166) of the Zoning Ordinance defines a nonconforming use as:

- (A) The “Use” of any “Building,” “Structure,” or land which is not in conformance with a requirement of the Zone in which it is located (as it specifically applies to the “Use”), provided that:
 - (i) The requirement was adopted after the “Use” was lawfully established; or
 - (ii) The “Use” was established after the requirement was adopted and the District Council has validated a building, use and occupancy, or sign permit issued for it in error.
- (B) The term shall include any “Building,” “Structure,” or land used in connection with a “Nonconforming Use,” regardless of whether the “Building,” “Structure,” or land conforms to the physical requirements of the Zone in which it is located.

According to the Maryland State Department of Assessment and Taxation database, the apartment building was constructed in 1960 and was, therefore, lawfully established prior to the use becoming nonconforming on April 24, 1961.

A CNU requires that certain findings be made. Section 27-244 sets forth the specific requirements for certifying a nonconforming use:

Section 27-244

- (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 is not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division). Any person making use of or relying upon the certification that is violating or has violated any conditions thereof, or that the use for which the certification was granted is being, or has been exercised contrary to the terms or conditions of such approval shall be grounds for revocation proceedings in accordance with this Code.

Tax records reflect construction of the dwelling in 1960, which predates zoning of the subject site. In addition, two similar multifamily buildings exist east of the subject site, having been constructed at about the same time, and both operate as certified nonconforming uses. A U&O permit is currently pending for the site.

(b) Application for use and occupancy permit.

- (1) The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**

The applicant filed U&O Permit 51768-2019-U on November 4, 2019, 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 the commencing date and continuous existence of the nonconforming use;**

Along with the application and accompanying site plan, the applicant submitted the following documentary evidence in support of the application:

- a. An affidavit from Mr. Myers, Sr. (owner), dated and signed on December 3, 2021, providing, to the best of his knowledge, chronological timeline events for the subject apartment building, including input from two long-term residents. The affidavit clearly shows there is an approximate 10-month break in use of the property, prior to his ownership, and an additional 17-month break in use after his ownership during renovation of the vacant building. The affidavit further provides that the building has been fully leased and occupied as of August 2014.
- b. The affidavit included input from a nine-year resident and twenty-year resident at 8219 and 8208 Bellefonte Lane, respectively, further affirming that the subject property was vacant only during the sale and renovation period from January 2012 to May 2014, after which the building use continued as multifamily housing.
- c. Copies of apartment rental licenses from DPIE from August 12, 1970 to March 27, 2010, and December 27, 2014 to December 27, 2018, which consistently show six apartment units on the property.

There are no rental licenses for the subject property for four years (from March 28, 2010–December 26, 2014). The prior owner did not acquire any rental licenses for two years, and the

applicant did not acquire any apartment rental licenses for an additional two years, according to the purchase date by the current owner.

The submitted documentation demonstrates the continuous existence of the multifamily building. However, there is an approximate 27-month time period when the day-to-day operations of the multifamily building ceased.

- (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.**

In consideration of the written evidence submitted by the applicant, along with the applicant's oral testimony at the hearing, the Board finds that the conditions of nonoperation for more than 180 consecutive calendar days were beyond the prior owners' and the applicant's control. According to the written evidence submitted by the applicant, including the applicant's statement of justification (SOJ), the six-unit apartment building had been a rental property from 1960 to January 2012. Subsequently, the apartment building was vacated, boarded up, and advertised for sale in February 2012. The Board finds that the period of nonoperation under the prior owners was beyond those owners' control. A fire severely damaged the building and extreme market conditions led to the property's foreclosure. The property was placed on the market in boarded-up and fire-damaged condition, requiring a lengthy selling period.

The property was purchased by the applicant, Mr. Joe Myers (the current owner), on December 21, 2012. Once he took ownership, there was a second break in use for approximately 17 months (January 2013 to May 2014). Because the renovations to bring the property up to code took longer than 12 months, the exception to the 180-nonoperation requirement under Section 27-243(c)(1) is unavailable. Nonetheless, the Board finds that the extensive renovations required to bring the property up to code necessitated the additional time. During the first 17 months of ownership, the applicant worked continuously to make improvements so that the property was safe and habitable. Those improvements included replacing the mechanical systems in the building, which not only included replacing the plumbing and electrical systems, but also involved removing the baseboard heaters and installing a new high-efficiency,

central HVAC system. In addition, Mr. Myers had to install new windows and a new roof.

Upon final walk-through, renovation permits were completed by DPIE on May 2, 2014, and the applicant proceeded to rent the apartments. The first apartment was rented on May 2, 2014, and the last apartment was rented on September 16, 2014. Three months later, DPIE issued a rental license to the applicant for the six-unit multifamily building.

The Planning Board, therefore, finds that day-to-day operations of the nonconforming use did cease for more than 180 consecutive calendar days; however, the additional time was beyond the prior owners' and the applicant's control. As a result, the Planning Board concludes that the use should be certified as a nonconforming 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;**

The submitted site plan, along with the application, notes the exact nature, location, size, and use of the property. Aerial photos also suggest that the parking lot was expanded in front of the building, along Bellefonte Lane, as recently as 2016. The Planning Board notes that the alteration to expand parking on the subject site requires approval of a special exception, pursuant to Section 27-242 of the Zoning Ordinance if the use is certified as nonconforming.

(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.

Per M-NCPPC Permit Review staff comment, and from records provided by DPIE and the applicant, the applicant does not possess any prior U&O permit for the multifamily dwelling.

(f) Planning Board review.

(1) Required hearing.

- (A) If a copy of a valid use and occupancy permit is not submitted with the application, if the documentary evidence submitted is not satisfactory to the Planning Board's authorized representative to prove the commencing date or continuity of the use, or if a public hearing has been requested by any party of interest challenging the commencing date and/or continuity of the use, the Planning Board shall conduct a public hearing on the application for the purpose of determining whether the use should be certified as nonconforming.**

Because a valid U&O permit has not been obtained, and the continuity of the use of the six-unit multifamily dwelling has not been demonstrated, the applicant has requested a hearing before the Planning Board by filing this application.

The Planning Board may act on the application, in accordance with Section 27-244(f)(4)(A):

(4) Planning Board Action

- (A) The Planning Board may decide to either grant or deny certification of the use as nonconforming. If it decides to certify that a nonconforming use actually exists and has continuously operated and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.**

DPIE does not oppose approval of the subject application. DPIE provided an email (Jeong to Hurlbutt) stating that the subject case does not require a renewed or active stormwater management concept on file, nor does it require a site development concept plan approval letter. The Planning Board further finds that a nonconforming use does exist, and should be certified, as the conditions of nonoperation for more than 180 consecutive calendar days were beyond the applicant's control, and the applicant's improvements were necessary to ensure the building was safe and in compliance with the building code.

CONCLUSION

The use of the subject property as an apartment building was established before Prince George's County's first zoning ordinance was enacted. Under the prior owners, the use ceased for an extended timeframe as a result of a fire and market conditions, both of which led to foreclosure and a protracted selling period. The applicant was not able to resume day-to-day operations of the building for 17 months after he purchased the property due to conditions beyond his control, primarily the extensive damage to the building that required major structural and mechanical improvements.

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, with no conditions:


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.

* * * * *

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 Doerner, seconded by Commissioner Washington, with Commissioners Doerner, Washington, Bailey, Geraldo, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, February 24, 2022, in Upper Marlboro, Maryland.

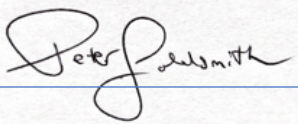
Adopted by the Prince George's County Planning Board this 17th day of March 2022.

Elizabeth M. Hewlett
Chairman

By 
Jessica Jones
Planning Board Administrator

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APPROVED AS TO LEGAL SUFFICIENCY



M-NCPPC Legal Department
Date: March 9, 2022