

## R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-17082-2007 requesting Certification of Nonconforming Use for a church and automobile parking spaces 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 5909 Riggs Road, is located on the south side of Riggs Road, 457 feet east of its intersection with Chillum Road. The property is zoned One-Family Detached Residential (R-55). It consists of two lots (Lot 1 and Lot 7) and is developed with an existing church (Lot 1) and associated parking (Lot 7).

- B. **Development Data Summary**

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone(s)	R-55	R-55
Use(s)	Church, Parking	Church, Parking
Acreage	0.49	0.49
Lots	2	2

- C. **History:** At least three different churches have been located on this property since the 1950s. At that time the site was classified in the R-55 Zone which allowed for the use by right. On August 30, 1993, the District Council approved CB-23-1993 amending the Zoning Ordinance to require a special exception for churches on less than one acre in the R-55 Zone. Thus, the use became nonconforming in 1993 when the Ordinance was amended to require a special exception.
- D. **Master Plan Recommendation:** The 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity and Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67* recommends a public/quasi-public use for the subject property and shows a church symbol on the plan map. 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 church and parking lot in the R-55 Zone. The R-55 Zone requires that churches on less than one acre obtain a special exception. The applicant has stated that Lot 1 of the property is now and has been consistently used as a church since the 1950s and Lot 7 has been used for parking since 1970 by these churches.
- F. **Surrounding Uses:** The site is surrounded by single-family residences to the north, east and south in the R-55 Zone. West of the site is a parking lot and vacant commercial building on Lot

30 (also owned by the applicant) in the Miscellaneous Commercial (C-M) Zone at the intersection of Riggs Road and Chillum Road. Northwest of the site, across Riggs Road, is a strip commercial center in the Commercial Shopping Center (C-S-C) 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 provided a copy of a use and occupancy permit (U&O) issued in 1970 for a church on Lot 1 of the site (Chillum Community Church); however, it does not include the area now used for parking (Lot 7). Because the entire site is not covered by the existing U&O, the certification cannot be done administratively and must go through this process. The applicant has submitted a deed showing that they purchased the area used for parking in 1991. Because this was done prior to the zoning text amendment in 1993, the parking area can be included in this certification request. The applicant has also purchased Lot 30, to the west, but it is not part of this certification.

The applicant submitted the following documentary evidence in support of the application:

1. A copy of a use and occupancy permit (No. 685110-U) dated May 13, 1970, for the Chillum Community Church on Lot 1 of the site. This use was permitted in the R-55 Zone at that time. The on-site parking for the church was waived by the District Council via Resolution No. 70-1970 based on a parking agreement between the church and the then owner of the then recently established parking on Lot 7 (Braun's Caterers). Braun's parking on Lot 7 was approved by the District Council as Special Exception No. 1868 in February 1969.
2. A copy of a deed showing that the parking lot adjacent to the church on Lot 7 was purchased by the church in 1991. Parking for a church, a permitted use, was similarly permitted.
3. Business records mailed to the subject property covering the years 1990–2007, including:
  - a. Various insurance certificates and policies covering the years 1990–1994
  - b. WSSC water and sewer bills covering the years 2001–2007
  - c. Pepco bills covering the years 2002–2007
  - d. Washington Gas bills covering the years 1993 and 2002–2007
  - e. Verizon bills covering the years 2002–2003
  - f. Prince George's County tax bills for tax year 1995–1996
  - g. Bills from ADT Security from 1991 and 1995
  - h. A savings account statement from 1999

In addition, staff has reviewed a series of 12 aerial photos of the site covering the 50-year time period from 1957–2007. Each photo shows the church building on Lot 1 in an identical location and layout. They also show that the parking on Lot 7 was in existence in 1970.

Section 27.107.01, Definitions, (166) Nonconforming Use, of the Zoning Ordinance defines:

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, the building has been on the property since at least 1957 and has a valid use and occupancy permit for a church from 1970. The use became nonconforming in 1993 due to a text amendment requiring a special exception for churches on less than one acre in the R-55 Zone. The evidence in this case shows that the uses predate this change in the Zoning Ordinance.

The applicant has submitted deeds and business records all of which suggest that the property has been continuously used as a church with associated parking since the time it became nonconforming. The records indicate 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. 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: 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. The Board believes that the evidence submitted satisfies this requirement. Therefore, the Planning Board APPROVED the subject application, CNU-17082-2007, for a church and associated parking on the subject property.

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 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.

\* \* \* \* \*

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 Clark, seconded by Commissioner Squire, with Commissioners Clark, Squire, Vaughns, Cavitt and Parker voting in favor of 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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