

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-22830-2005 requesting Certification of a Nonconforming Use in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, the Technical Staff recommended DENIAL of the request based on the findings in the Technical Staff Report; and

WHEREAS, after consideration of additional evidence and persuasive testimony presented at the public hearing on December 13, 2007, the Prince George's County Planning Board recommends APPROVAL based on the following findings:

- A. **Location and Field Inspection:** The subject property, known as New Mount Olivet Apostolic Church, is located approximately one mile southeast of Martin Luther King Highway (MD 704) at the northeast quadrant of Seat Pleasant Drive and Addison Road in Seat Pleasant. The site has over 185 feet of frontage along the south side of Seat Pleasant Road and 211 feet of frontage along Addison Road. The site contains .5641 acre and is developed with a church and associated parking area. Access to the property is provided from both Seat Pleasant Drive and Addison Road.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone	R-55	Unchanged
Acreage	.5641	Unchanged
Use	Church	Unchanged
Lot Coverage	70.2 percent	Unchanged

- C. **History:** Prior to the construction of the church, the property was improved with a one-story dwelling built before 1938. In 1943, the subject property, then comprising Lots 1, 2, 3, 4 and 120 and under the ownership of the Vestry of St. Matthew's Church, Addison Parish, was acquired by Faith Church of the Nazarene, which constructed a large addition to the original structure. In 1949, Lots 5-7 were acquired by Faith Church and the use was expanded to provide additional parking. In 1980, the church (at that time owned by Faith Temple No. 2 Original Free Will Baptist Church), acquired Lots 118 and 119, which was improved with a single-family dwelling. New Mount Olivet acquired the entire church property in 1992.

The use became nonconforming on August 13, 1993, when the Zoning Ordinance was amended to require a special exception for churches on lots of less than two acres in the R-R Zone. The subject property is only .5641 acre, or 24,573 square feet. Because Lots 118 and 119 were under the ownership of the church in 1993, they are included in the nonconforming use certification. The dwelling on Lots 118 and 119 was razed (with a permit) in 1999. The Board notes that because the church subsequently constructed a parking area on the lots, which technically expanded the nonconforming use, Lots 118 and 119 will be subject to a special exception. The applicant applied for a use and occupancy permit in August 2005 and was denied because no

prior use and occupancy permit for the property could be found.

D. **Master Plan Recommendation:** The 2002 General Plan shows the property in the Developed Tier. The February 1993 *Approved Master Plan for Landover and Vicinity (Planning Area 72)* recommends residential development at a “medium suburban” density. The July 1993 sectional map amendment retained the property in the R-55 Zone.

E. **Request:** The applicant requests certification of a church that was built in 1943 and expanded in 1999. Because development regulations in the R-55 Zone were changed or adopted after the use was established, the church became nonconforming. The nonconforming status began in August 1993, when the Zoning Ordinance was amended to require a special exception for churches on lots less than two acres.

F. **Surrounding Uses:**

The site is surrounded by the following uses:

Northwest: Across Seat Pleasant Drive, a gas station and fast food restaurant, zoned C-S-C.

East: Single family dwelling, zoned R-55; undetermined business, zoned C-S-C.

Southwest: Across Addison Road, commercial service uses and vacant structure zoned C-S-C and C-1.

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 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 subject property became part of the Regional District on April 17, 1928. According to the site plan, a one-story structure with a basement was constructed on the property at some point prior to 1938. It would not be unreasonable to assume the structure was used as a church since it is clear that in 1943, when the property was sold, it was owned by a religious organization. The site plan indicates the newer portion of the church was constructed in 1943. When the applicant applied for a use and occupancy permit June 27, 2005, the Planning Information Services staff could not verify that the church was built in accordance with requirements in effect at the time of construction because DER could not locate original use and occupancy permit records for any of the addresses associated with the church use. 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. Three deeds dated respectively, January 25, 1943; August 13, 1970; and, November 20, 1992; representing use of the premises for religious purposes since 1943.
2. A letter dated August 4, 2005, from WSSC indicating 5900-5910 Addison Road is served by two accounts: one for 5900 Addison Road and one for 5908 Addison Road. The account for 5908 Addison Road was established November 1, 1949. New Mount Olivet Church was placed on the account April 25, 1994. The account for 5900 Addison Road was established March 1, 1962. On July 21, 1995, WSSC noted New Mount Olivet Church was the owner; the church was placed on this account on December 9, 1996.
3. August 30, 2005, letter from PEPCO indicating electric service has been provided to New Mount Olivet Apostolic Church since 1994.

4. Various flyers advertising church events April-May 1994; July-August, 1995; July-August 1997; April 1999; and, July-August 1999.
5. Four affidavits indicating the church has been in continuous operation since 1994.

Discussion: Seat Pleasant was included in the Regional District on April 17, 1928. The original single-story structure on the property, presumed to be utilized as a church, may or may not have been constructed prior to the property's inclusion in the Regional District. All that can be established is that the structure was built prior to 1938. The Zoning Ordinance in effect at the time the church addition was constructed was adopted on May 12, 1942. The subject property was placed in the "A" Residence Zone and was, therefore, subject to the development regulations of that zone. A church was a permitted use in the "A" Residence Zone. The "A" Residence Zone required each lot to have no less than 5,000 square feet and a minimum width of 50 feet at the front building line. The subject property was in compliance with those requirements. The Zone further prescribed the following height and setback requirements:

Height: Maximum of 40 feet or three stories
Front: 25 feet from front street line
Rear: 20 feet from rear property line
Side: Seven feet in width on each side of a main building

There were no lot coverage requirements or parking requirements in 1942.

Based on testimony provided at the public hearing, it can be presumed that the original structure, most likely constructed circa 1920, was lawfully established. Moreover, the church addition, constructed in 1943, was in compliance with the setback requirements of the 1942 Zoning Ordinance in effect at the time the church was established. The Zoning Ordinance permitted a lesser setback than generally required as long as it did not encroach further into the required setback than the prevailing pattern along the street; thus, the church was in compliance with the 1942 regulations.

Based on current zoning requirements, the site plan is nonconforming with regard to front and side street yard setbacks (from the ultimate rights-of-way along Addison Road and Seat Pleasant Drive), parking (68 spaces are required for 272 seats, 15+ spaces are provided) and lot coverage (60 percent maximum allowed; 70 percent provided).

In the Board's opinion, the evidence presented by the applicant supports the applicant's claim that the use was legally established at the time of the nonconformity and that it has been in continuous operation without a gap of more than 180 days.

The Board notes that there are two free-standing signs on the property, both located within the ultimate 80-foot-wide right-of-way for Addison Road. The location of the signs is indicated on the site plan. The applicant will either be required to remove these signs from the right-of-way and relocate them in conformance with current regulations, or obtain approval of the District Council pursuant to Section 27-604 and Section 27-259 of the Zoning Ordinance.

CONCLUSION:

Based on the information submitted by the applicant and testimony presented at the public hearing, the Board finds the applicant provided sufficient evidence by which the Board could reasonably conclude the church was lawfully established at the time the use became nonconforming. In addition, there is no evidence to suggest a lapse of continuous use over 180 days by the church.

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 recommends APPROVAL of 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 Squire, seconded by Commissioner Clark, with Commissioners Squire, Clark, Vaughns, Cavitt and Parker voting in favor of the motion at its regular meeting held on Thursday, December 13, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 3rd day of January 2008.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

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