

# **THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

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PGCPB No. 14-102

File No. CNU-38404-12

## RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-38404-12, Kay Property II, requesting certification of a nonconforming use for more than one single-family residence on a parcel 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 18, 2014, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, known as Parcel 223, is identified as a single deed parcel located northeast of Laurel Bowie Road (MD 197). Parcel 223 is 4.92 acres in size and is zoned Open Space (O-S). It is developed with four single-family residences: 8305 Laurel Bowie Road, the primary address, and three additional structures identified as 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8305 Laurel Bowie Road. Ingress/egress to the property is via the the Washington, Baltimore and Annapolis (WB&A) Trail.

The original home, 8305 Laurel Bowie Road, was constructed in approximately the 1940s. It is located in the northeast section of the property, adjacent to the Berwyn Heights Rod and Gun Club. It is a one-story, 695-square-foot, frame house. There are three 10- by 20-foot parking spaces. This house serves as the primary residence of the subject property. There was a fifth house and garage on the property. The garage is scheduled to be razed and the house was razed. Ingress/egress to the property is via the WB&A Trail.

The structure, 8301 Laurel Bowie Road, was constructed in the 1940s and is a one-story, 944-square-foot, frame house with a detached, 472-square-foot, two-car garage. It is located approximately 40 feet west of 8299 Laurel Bowie Road. Ingress/egress to the property is via the WB&A Trail.

- B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	O-S	Unchanged
Acreage	4.92	Unchanged
Use(s)	Single-family Dwelling	Unchanged

- C. **History:** The Kay properties, located on Parcel 223, were constructed in the 1940s. The primary structure known as 8305 Laurel Bowie Road was constructed in the 1940s per the Maryland State Department of Assessments and Taxation database; 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8305 Laurel Bowie Road were constructed during the 1940s when the property was not part of the Maryland-Washington Regional District (Regional District). When the property was subsequently annexed into the Regional District in 1957, the Zoning Ordinance prohibited more than one dwelling unit on a single lot. There are no previously issued use and occupancy (U&O)

permits for the properties. The applicant applied for U&O permits for the houses at 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8305 Laurel Bowie Road and was denied because no prior U&O permits for the property could be found; therefore, a public hearing before the Planning Board is required.

- D. **Request:** The applicant requests certification of three existing single-family dwellings that were constructed in the 1940s when the property was not subject to the requirements of the Zoning Ordinance. Because development regulations were changed or adopted after the subject use was lawfully established, the homes became nonconforming. The nonconforming status began November 20, 1957 when the property came into the Regional District and was subject to the Zoning Ordinance. Section 27-118.01 of the Zoning Ordinance permits only one dwelling unit on a lot. However, Parcel 223 has four dwelling units, as the subject property was not part of the Regional District and not subject to the requirements of the Zoning Ordinance at the time of construction of three of the single-family dwellings, 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8305 Laurel Bowie Road, during the 1940s.

- E. **Surrounding Uses:** The site is surrounded by the following uses:

**North—** Property zoned Open Space (O-S) and woodlands.

**West—** Undeveloped land zoned Rural Residential (R-R).

**East—** Berwyn Heights Rod and Gun Club.

**South—** WB&A Trail and property owned by The Maryland-National Capital Park and Planning Commission (M-NCPPC) zoned O-S.

- F. **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.**

- (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.**
- (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 non-operation 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**—According to the applicant's documentation, the single-family dwellings were constructed prior to 1957. When the applicant applied for a U&O permit in 2012, the Planning Information Services staff could not verify that the single-family dwellings were built in accordance with the requirements in effect at the time of construction because the original U&O permit records were not available. 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 (November 20, 1957) and that it has been in continuous operation since that time.

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

1. Use and Occupancy Permit applications for 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8305 Laurel Bowie Road (Exhibit 1).
2. 1944 property deed (Exhibit 2).
3. Washington Suburban Sanitary Commission (WSSC) water bills dated November 9, 2006 through January 31, 2007 for 8305 Laurel Bowie Road (Exhibit 3).
4. Maryland State Department of Assessments and Taxation property record citing 8305 Laurel Bowie Road as the primary structure built in 1900 (Exhibit 4).
5. Prince George's County Assessment Book Records for the years 1940 through 1946 and 1950 through 1954 (Exhibit 5).
6. Accord dwelling fire insurance application for 8305-A Laurel Bowie Road and 8305-B Laurel Bowie Road dated 2/14/06 – 2/14/07 (Exhibit 6).
7. Prince George's County Tax Bill for tax year July 1, 2005 to June 30, 2006 (Exhibit 7).
8. Recorded easement to the Consolidated Gas Electric Light and Power Company of Baltimore dated December 13, 1944 (Exhibit 8).
9. Notarized statement of Agnes McLaughlin citing she resided on the property known as 8301 Laurel Bowie Road from 1951 to 1953 and providing additional history (Exhibit 9).
10. Handwritten letter by Agnes McLaughlin citing the history of 8299 Laurel Bowie Road (Exhibit 10).
11. Notarized statement of John Hall citing he resided on the property from 1948 to 1966 (Exhibit 11).
12. Chesapeake and Potomac telephone directory records from 1977, 1985, and 1989 for William H. Shenk located at 8301 Laurel Bowie Road/9 Old Chapel Road, Bowie (Exhibit 12).
13. William Hottle Shenk citing address 8303 Laurel Bowie Road via Ancestry.com, U. S. Public Records (Exhibit 13).
14. Chesapeake and Potomac telephone directory records from 1971, 1977, 1980, and 1985 for Willard L. Ashburn located at Lloyd Station Road, Bowie (Exhibit 14).
15. Chesapeake and Potomac telephone directory records from 1989 for James Cox located at 8299 Laurel Bowie Road, Bowie (Exhibit 15).

16. Real estate lease dated August 1, 2005, terminating July 31, 2006, between Thomas Kay and Tara Dolin for 8299 Laurel Bowie Road (Exhibit 16).
17. Real Estate Lease dated April 1, 2009, terminating March 31, 2010, between Thomas Kay and Agnes McLaughlin for 8301 Laurel Bowie Road (Exhibit 17).
18. Notarized statement of Amelia Richardson citing she resided on the property known as 8301 Laurel Bowie Road since 1959 and providing additional history (Exhibit 18).
19. Letter dated January 27, 2006 to the Baltimore Gas and Electric Company (BG&E) requesting a change in address for service at 8301 Laurel Bowie Road (Exhibit 19).
20. Three basic rental agreements dated June 1, 2014, terminating May 31, 2015, for 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8303 Laurel Bowie Road (Exhibit 20).
21. A site plan dated January 25, 2013.

The evaluation of the three single-family dwelling units known as 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8303 Laurel Bowie Road is based upon construction of the dwellings prior to November 20, 1957. The property assessment records demonstrate when and how the property was improved and occupied for use as single-family dwellings. There is sufficient evidence provided to support the claim that the dwellings were constructed on the subject property prior to 1957. M-NCPPC 1965 aerial maps show five established single-family residential dwellings on the property. This is further validated by the notarized statements of former residents. The lease agreements demonstrate continuous use of the dwellings. There is no previous record of prior U&O permits for any of the properties.

## DISCUSSION

The above evidence, which consists of notarized statements from residents, Prince George's County tax records, WSSC bills, state assessment information, telephone directory entries noting the property address, real estate leases, and other documents support the applicant's claim that the single-family dwellings known as 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, 8303 Laurel Bowie Road have been in continuous use since being constructed in the 1940s and when the use became nonconforming in 1957. The subject property currently has a total of four single-family dwelling units. Each of the dwelling units, 8305 Laurel Bowie Road, 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8303 Laurel Bowie Road, were developed when they were not subject to Zoning Ordinance requirements. Each of the dwelling units, 8305 Laurel Bowie Road, 8299 Laurel Bowie Road, 8301 Laurel Bowie Road, and 8303 Laurel Bowie Road, are currently leased on a month-to-month basis by longtime residents of the community. There is no evidence of a lack of occupancy for any of the four single-family dwelling units.

## CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject property, 8301 Laurel Bowie Road, was not subjected to the requirements of the Zoning Ordinance when constructed in the 1940s. There is also no evidence to suggest a lapse of continuous use since 1957 when the use became nonconforming. Therefore, it is recommended that Certification of Nonconforming Use Application No. CNU-38404-12, for Kay Property II be APPROVED as certified nonconforming uses.

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.

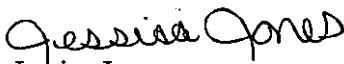
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

\* \* \* \* \*

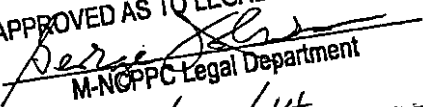
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Geraldo, seconded by Commissioner Bailey, with Commissioners Geraldo, Bailey and Hewlett voting in favor of the motion, and with Commissioners Washington and Shoaff absent at its regular meeting held on Thursday, September 18, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 9th day of October 2014.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY  
  
M-NCPPC Legal Department  
Date 9/22/14