

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 15-72

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco
File No. CNU-41821-2014

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use CNU-41821-2014 requesting certification of a nonconforming use for a church on less than one acre in the R-55 Zone 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 July 16, 2015, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The property is located south and west of the intersection of Annapolis Road (MD 450) and 53rd Street. It consists of three lots; Lots 8 and 9, which are developed with a one-story brick building known as 4006 53rd Street (formerly Saint Luke's Episcopal Church), and Lot 23 that serves as the church parking lot. The three lots have a net lot area of approximately 0.34 acre and are zoned One-Family Detached Residential (R-55). Access to the property is provided egress/ingress on 53rd Street.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s):	R-55	Unchanged
Lots/Parcels:	3 (Lots 8, 9 & 23)	Unchanged
Acreage:	0.34	Unchanged
Gross Floor Area:	3,685 sq. ft.	Unchanged
Use(s):	Church	Unchanged

C. **History:** Per church records, the building was constructed in the 1950s. The Maryland-National Capital Park and Planning Commission (M-NCPPC) issued a permit to relocate a bell tower, Permit 9108-95CG, in 1995.

D. **Request:** The applicant requests certification of a nonconforming use for a parking compound, a church, and associated parking in the R-55 Zone. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began August 31, 1993 when Prince George's County Council Bill CB-23-1993 amended the Prince George's County Zoning Ordinance to require a special exception in the R-55 Zone.

E. **Surrounding Uses:** The surrounding area is developed with a mix of commercial, retail, and residential uses. The site is surrounded by the following uses:

- North—** Annapolis Road (MD 450) and developed apartment community properties zoned Multifamily High Density Residential (R-10), with a Mixed Use–Transportation Oriented (M-X-T) overlay.
- South—** Properties improved with single-family residences zoned R-55.
- East—** 53rd Street and vacant properties zoned R-55.
- West—** Properties improved with single-family residences zoned R-55.

- 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 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) **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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).**

(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 nonoperation for more than one hundred eighty (180) consecutive calendar days between the time the**

use became nonconforming and the date when the application is submitted, or that conditions on nonoperation for more than one hundred eighty (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—In accordance with Section 27-244(f), the Prince George's County 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. According to the applicant's documentation, a church has operated at the subject property since some time in the 1950s when the building was constructed.

When the applicant applied for a use and occupancy (U&O) permit, the Permit Review Section staff was not able to locate an original U&O permit. 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 for the nonconforming use status of a parking compound:

1. Permit application CNU-41821-2014 for Saint Michael Eritrean Orthodox Church.
2. Permit application No. 5066U dated May 7, 1961 and August 18, 1961 for the Vestry of Saint Luke's Church, 4006 53rd Street, Bladensburg, MD.
3. Deed dated December 12, 2014 conveying Lots 8, 9, and 23 from the Convention of the Protestant Episcopal Church of the Diocese of Washington to Saint Michael Eritrean Orthodox Church, Inc.

4. Deed dated October 7, 2011 conveying Lots 8, 9, and 23 between the Vestry of Saint Luke's Episcopal Church to the Convention of the Protestant Episcopal Church of the Diocese of Washington. This deed cites conveyance of the subject property in 1944, 1953, and 1961.
5. Permits (expired September 30, 1999, 2000, and 2005) to operate a nonprofit food service utility for Saint Luke's Episcopal Church, 4006 53rd Street.
6. State of Maryland Department of Labor, Licensing and Regulation Certificate of Boiler or Pressure Vessel Inspection dated November 7, 2007 for Saint Luke's Episcopal Church, 4002 53rd Street, Bladensburg, MD.
7. Letter from the Prince George's County Health Department dated December 30, 2005 citing the adoption of Council Bill 68-2005.
8. Letter from the Washington Suburban Sanitary Commission (WSSC) dated April 29, 2015 citing service from July 10, 1995 through December 31, 2014 to Saint Luke's Episcopal Church.
9. Letter from the Potomac Electric Power Company (PEPCO) dated April 29, 2015 citing service to Saint Luke's Episcopal Church since December 2, 1975 and PEPCO bills for service from April 14, 2014 to June 12, 2014.
10. Letter from Solomon Gebreyesus, Board Vice Chairman, Saint Michael Church, dated February 23, 2015 noting the change in ownership of the subject property.
11. Letter from Paul E. Cooney, Canon to the Ordinary and Chief Operating Officer of the Episcopal Diocese of Washington, noting that the subject property has been used for public worship since its construction through the present.
12. Letter from Reverend Mark Lewis, Pastor, Saint Luke's Parish, citing that the subject property was used by Saint Luke's Parish church since 1952 until December 2011, and that Saint Luke's Ordinariate Catholic Community rented the subject property from October 2011 through September 7, 2014.
13. Church Registers: Death, Marriage, Burials, and Baptisms.
14. Internet page of Saint Luke's Catholic Church noting hours of operation, church history, calendar, and date of relocation.
15. Advertisement of church property for sale by W.F. Chesley Real Estate, LLC.

16. Memoranda and other relevant documents related to the permits issued for the bell tower in 1995 for Saint Luke's Episcopal Church.
17. M-NCPPC aerial photo from 1965 showing the subject property.
18. Plat 41509 dated December 3, 1970 illustrating the right-of-way acquisition from Lots 8 and 9 by the State Roads Commission of Maryland from the Vestry of Saint Luke's Episcopal Church.

DISCUSSION

The aerial photos specifically provide visual evidence that the subject property was in existence in 1965, 30 years prior to the adoption of CB-23-1993, which requires a special exception for a church in the R-55 Zone. The right-of-way acquisition plat further supports the establishment of the church in accordance with all regulations at the time it began. The applicant has provided a plethora of documents, such as property deeds, letters from church officials, service letters from utility companies, and church documents, clearly demonstrating the use of the subject property as a church and for religious purposes prior to August 31, 1993 when the use became nonconforming. There is evidence that the subject property did cease operating as a church (or for religious purposes) while it was in the process of being sold, but the applicant applied for the U&O permit as the contract was pending. The lapse of use as a church was less than 180 days and has no negative impact on the time limitations. The applicant has proactively sought to legally use the subject property as a church, as it has been used as such since the 1950s.

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 (Lots 8, 9, and 23) was and is currently used as a church and parking compound in accordance with the requirements of the Zoning Ordinance in effect prior to August 31, 1993.

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, subject to the following conditions:

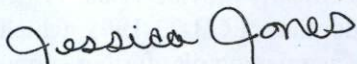
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

* * * * *

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 Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, Shoaff, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 16, 2015 in Upper Marlboro, Maryland.

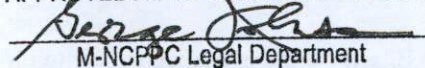
Adopted by the Prince George's County Planning Board this 30th day of July, 2015.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:IRT:rpg

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 7/21/15