



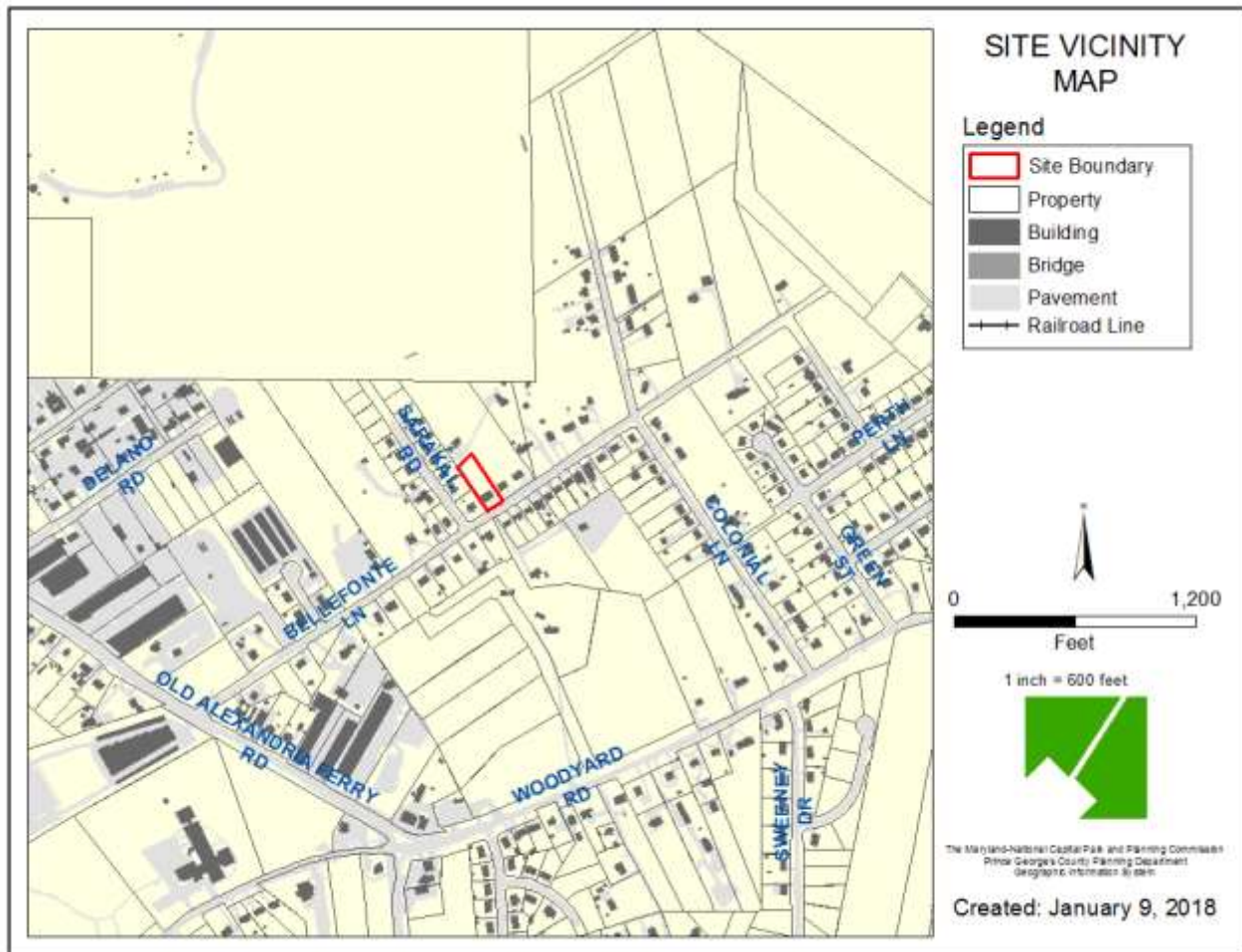
*Note: Staff reports can be accessed at <http://mncppc.igmp2.com/Citizens/Default.aspx>.*

## Certification of Nonconforming Use CNU-12648-2015

Application	General Data	
<b>Project Name:</b> 8204 Bellefonte Lane Apartments  <b>Location:</b> On the north side of Bellefonte Lane, approximately 2,500 feet on the northeast side of the intersection of Old Alexandria Ferry Road and Bellefonte Lane.  <b>Applicant/Address:</b> Joe Myers, Sr. 3521 Jeff Road Upper Marlboro, MD 20774  <b>Property Owner:</b> Joe Myers, Sr. 3521 Jeff Road Upper Marlboro, MD 20774	Planning Board Hearing Date:	02/15/18
	Staff Report Date:	02/02/18
	Date Accepted:	11/14/17
	Planning Board Action Limit:	N/A
	Plan Acreage:	0.459
	Zone:	R-R
	Gross Floor Area:	N/A
	Lots:	NA
	Parcels:	1
	Planning Area:	81A
	Council District:	09
	Election District	09
	Municipality:	N/A
200-Scale Base Map:	210SE07	

Purpose of Application	Notice Dates	
Certification of a nonconforming use for an existing six-unit apartment building in the R-R Zone.	Informational Mailing	09/11/17
	Acceptance Mailing:	11/06/17
	Sign Posting Deadline:	01/16/18

<b>Staff Recommendation</b>		<b>Staff Reviewer:</b> Taslima Alam <b>Phone Number:</b> 301-952-4976 <b>E-mail:</b> Taslima.Alam@ppd.mncppc.org	
<b>APPROVAL</b>	<b>APPROVAL WITH CONDITIONS</b>	<b>DISAPPROVAL</b>	<b>DISCUSSION</b>
		X	



THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board

VIA: Sherri Conner, Acting Supervisor, Subdivision and Zoning Section  
Development Review Division

FROM: Taslima Alam, Senior Planner, Subdivision and Zoning Section  
Development Review Division

SUBJECT: Certification of Nonconforming Use Application No. CNU-12648-2015

REQUEST: Certification of a nonconforming use for an existing six-unit apartment building in the  
R-R Zone.

RECOMMENDATION: **DISAPPROVAL**

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NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of February 15, 2018. The Planning Board also encourages all interested persons to request to become a person of record for this application.

Requests to become a person of record should be made in writing and addressed to The Maryland-National Capital Park and Planning Commission, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Please call 301-952-3530 for additional information.

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## FINDINGS

1. **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 Land Records of Prince George's County 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 eight-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.

During the field inspection, it was noted that the site had an existing asphalt parking lot to the rear of the building, which was not shown on the site plan submitted with the subject application. In addition, in 2016, aerial photos of the site revealed that additional paving has been added in the area of the site's frontage along Bellefonte Lane. The permit database does not indicate that any permits have been issued for expanded areas of paving on the subject site. The alteration of a certified nonconforming use requires the approval of a special exception, pursuant to Section 27-242 of the Prince George's County Zoning Ordinance.

2. **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 Rural Residential (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 units to six units, and was subsequently certified as a nonconforming use in 2016 after approval of ERR-255.
3. **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 Rural Residential (R-R) zoning designation
  - 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, Inspection 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 for general interior renovations and to upgrade the heating and plumbing for each apartment unit with DPIE.
  - 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 Use and Occupancy (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 Prince George’s County 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 the M-NCPPC Permit Review staff, consistent with the previous determination that a certification of nonconforming use 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.
4. **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 an R-R zoning designation. Based on the current standard for the R-R Zone, the Zoning Ordinance prohibits more than one dwelling unit on a single lot.

There are no previous 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. Therefore, certification of a nonconforming use is requested to be approved by the Planning Board due to the lack of documentary evidence for continuous operation, and because there were no prior U&O permits approved for the site.

5. **Site Data Summary:**

Zone	R-R
Acreage	0.459
Use	Multifamily Dwellings
Total Units	6
Lot Coverage	24%
Site Density	13.07 Dwelling Units/Acre

6. **Master Plan Recommendation:** The subject site is located within the 2013 *Approved Subregion 5 Master Plan and Sectional Map Amendment* (Subregion 5 Master Plan and SMA), and in the 2013 *Approved Central Branch Avenue Corridor Revitalization Sector Plan* (sector plan). The master plan retained the subject property in the R-R Zone. Both the master plan and sector plan designate “Industrial” as the future land use for the subject property. In the sector plan, the Future Land Use Map is on page 112 and, in the master plan, the Future Land Use Map is on page 32.

The subject property is within Accident Potential Zone 1, Height Zone B (50:1 slope from runway end determines the height limit), and is subject to noise greater than 75 db. The consensus is that 65 decibels is the “maximum noise level generally acceptable for residential areas” (master plan, page 60). The master plan discusses residential areas in Accident Potential Zone 1 as follows: “Over time, some areas in APZ 1 have changed from residential uses that are inconsistent to industrial uses that are consistent with the guidelines.” (The “Guidelines” are the *Air Installation and Land Use Compatibility Study Guidelines* for land use surrounding Joint Base Andrews.) The master plan “reinforces the 1993 (master plan) policy to transition these (residential) areas from residential to industrial land uses” (page 62). The Subregion 5 Master Plan and SMA, however, retained the subject property in the R-R Zone.

7. **Definition of Nonconforming Use:**

- (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.

- 8. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. 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 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.**

While no building permit or U&O permit is available to determine that the multifamily building was legally constructed, tax records reflect construction of the dwelling in 1960, which predates zoning of the subject site. In addition, two similar multifamily buildings are existing east of the subject site, having been constructed at about the same time, and both operating as certified nonconforming uses.

- (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 submitted an application for a U&O permit on November 12, 2014 and on April 2, 2015. Upon reviewing the U&O permit application, it was determined by DPIE and M-NCPPC Permit Review staff that there was no prior issued U&O permit for the multifamily dwelling on record, and that the applicant should proceed with an application for certification of a nonconforming use by the Planning Board. The applicant filed the subject certification of nonconforming use application in September 2017 with the Development Review Division of the Prince George’s County Planning Department.

- (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. Deed of ownership by Joseph E. Myers, Sr. (owner) since December 21, 2012 and a copy of the settlement statement (HUD-1).
- b. An affidavit from Mr. Myers, Sr. (owner) dated and signed on January 9, 2018, providing, to the best of his knowledge, chronological timeline events for the subject apartment building. 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.
- c. An affidavit from a nine-year resident at 8219 Bellefonte Lane stating 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.
- d. Copies of the interior renovation permits for all units from March 5, 2013, and final commercial interior walk-through (CIW) permits issued on May 2, 2014.
- e. Copies of various renovation/remodeling contract agreements relating to the improvements completed in the apartment, payment invoices from the bank, and issuance of permits for the improvements from December 21, 2012 to May 2, 2014.
- f. 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.

- g. Copies of rent roll showing the dates all apartment units were occupied after the final CIW was approved on May 2, 2014, demonstrating the units to be fully rented by September 16, 2014.
- h. Copies of utility bills payments from the Potomac Electric Power Company (PEPCO) from March 17, 2014 to July 19, 2017



- i. Metropolitan Regional Information Systems, Inc. (MRIS), which shows that this property was listed for sale on February 4, 2012, and was on the market for 235 days, or over 10.5 months before it was sold to Mr. Myers on December 21, 2012.
- j. Color photographs of the interior and exterior of the building before and after the renovations.

The submitted documentation demonstrates the continuous existence of the multifamily building. However, there is an approximate 27-month time period when the use 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.**

According to the evidence submitted by the applicant, along with the statement of justification (SOJ), it is estimated that 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, in accordance with the deceased's estate trust. While the property was on the market for sale, it was vacant for 10 months (approximately 330 days), which could be justified as beyond the applicant's control because the property was not in his possession. The property was purchased by the applicant, Mr. Joe Myers (the current owner) on December 21, 2012. After possession of the property by Mr. Myers, there was a second break in use for approximately 17 months (January 2013 to May 2014), during which time the applicant applied for renovation permits, including upgrading the heating and plumbing for all apartment units.

The applicant claims in his SOJ that the apartments were uninhabitable to rent; however, no evidence was provided to show the renovations were being done in order to correct code violations. Upon final walk-through, renovation permits were completed by DPIE on May 2, 2014, and the applicant proceeded to rent the apartments. Based on the submitted rent roll, all apartment units were fully rented within four months after the final renovation approvals, without a legal U&O permit or rental license. 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 on December 27, 2014.

Upon reviewing the documentation submitted for the U&O permit application, staff finds that the nonconforming use ceased to operate for more than 180 consecutive calendar days. Consequently, the Planning Board must determine whether the use should be certified as nonconforming pursuant to Section 27-244(f) of the Zoning Ordinance, as further discussed.

**(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. However, the site visit revealed a rolled metal trash bin blocking parking spaces and a parking lot, which have not been shown on the site plan. Aerial photos also suggest that the parking lot was expanded in front of the building, along Bellefonte Lane, as recently as 2016. Staff 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 submitted, 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 required findings of the Planning Board are further described in Section 27-244(f)(4)(A) as follows:

**(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.**

At the time of the writing of this staff report, January 31, 2018, DPIE provided an e-mail (Kashanian to Alam) stating that a stop work order was issued for the construction of a parking pad without permits, and that a building violation notice and fines would be issued for the subject property. Staff further finds that a nonconforming use does exist, but has not continuously operated on the subject site.

**CONCLUSION**

While the applicant provided documentation, including all remodeling invoices, utility bills, his own affidavit, and an affidavit from an adjacent resident, the applicant did not provide justification for not acquiring or applying for the required rental license and U&O permit during the first two years of his possession. Staff believes that the rental licenses issued to the applicant in 2016 were in error, as the building did not meet the criteria for continuous operation and was not able to obtain a U&O permit. The SOJ did not provide explanation or documentation from any County authority, such as DPIE, that extensive renovation was necessary to rent the property upon the applicant's ownership. Furthermore, once the renovation was completed, the applicant proceeded to rent the apartments without acquiring a U&O permit. It appears that the applicant filled out and signed a U&O permit application on November 12, 2014, but failed to act on the process until a violation was issued for the use of a building, structure, or land without a legal U&O permit on September 2, 2016. Documentation submitted by the applicant shows that there was a 17-month break in use, and that the use has been operating without a U&O permit since May 2014, under the applicant's control. Staff further finds that the applicant has not satisfied the criteria to be certified as a nonconforming use, given the existing County Code violations regarding the subject property. For these reasons, staff recommends DISAPPROVAL of Certification of Nonconforming Use Application No. CNU-12648-2015.