



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Certification of Nonconforming Use CNU-12648-2015

8204 Bellefonte Lane Apartments

REQUEST	STAFF RECOMMENDATION
Certification of a nonconforming multifamily use.	DISAPPROVAL

Location: 1,800 feet northeast of the intersection of Old Alexandria Ferry Road and Bellefonte Lane.

Gross Acreage: 0.46

Zone: R-R/M-I-O

Gross Floor Area: N/A

Parcels: 1

Planning Area: 81A

Tier: Developing

Council District: 09

Election District: 09

Municipality: N/A

200-Scale Base Map: 210SE07

Applicant/Address:

Joe Myers, Sr.
3521 Jeff Road
Upper Marlboro, MD 20774

Staff Reviewer: Tom Sievers

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Planning Board Date: 02/24/2022

Planning Board Action Limit: N/A

Staff Report Date: 02/08/2022

Date Accepted: 11/14/2017

Informational Mailing: 10/31/2021

Acceptance Mailing: 11/08/2021

Sign Posting Deadline: 01/25/2022

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at

http://www.mncppcapps.org/planning/Person_of_Record/.

Please call 301-952-3530 for additional information.

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THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Certification of Nonconforming Use CNU-12648-2015
 8204 Bellefonte Lane Apartments

The Zoning staff has reviewed the certification of nonconforming use application for the subject property and presents the following evaluation and findings leading to a recommendation of DISAPPROVAL, as described in the Recommendation section of this report.

EVALUATION CRITERIA

This application for certification of nonconforming use was reviewed and evaluated for compliance with the following criteria:

- a. Existing conditions
- b. Site history
- c. The requirements of the Prince George's County Zoning Ordinance for certification of a nonconforming use

FINDINGS

1. **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 a Rural Residential (R-R) zoning designation. Based on the current standard for the R-R Zone, the Prince George's County Zoning Ordinance prohibits more than one dwelling unit on a single lot, and the existing apartment building contains six.

There are no previous use and occupancy (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. The applicant is requesting that the Prince George's County Planning Board certify the nonconforming use; however, staff is recommending disapproval because the documentary evidence shows that day-to-day operation ceased for a period of more than 180 consecutive calendar days.

2. **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 Prince George's County Land Records 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 8-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.
3. **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 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 to six units, and was subsequently certified as a nonconforming use in 2016 after approval of ERR-255.
4. **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 R-R-zoning designation, which prohibits the multifamily use.
 - 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, Inspections 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 with DPIE, for general interior renovations and to upgrade the heating and plumbing for each apartment unit.
- 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 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 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 M-NCPPC Permit Review staff, consistent with the previous determination that a certification of nonconforming use (CNU) 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.
- p. **February 15, 2018**—The application was continued indefinitely by the Planning Board.
- q. **November 4, 2019**—The applicant filed U&O Permit 51768-2019-U.

- r. **Present Day**—The applicant submitted an affidavit, as well as rental license agreements that affirm the building has been fully leased and occupied with new residents from August 2014 to present day.

5. **Site Data Summary:**

Zone:	R-R/M-I-O
Acreage:	0.46
Use:	Multifamily Residential
Total Units:	6
Site Density:	13.07 dwelling units/acre
Lot Coverage:	17.5%

6. **Certification Requirements:** Section 27-107.01(a)(166) of the Zoning Ordinance defines a nonconforming use as:

- (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.

A CNU requires that certain findings be made. Section 27-241 of the Zoning Ordinance sets forth the required findings of the Planning Board and Section 27-244 sets forth the specific requirements for certifying a nonconforming use:

Section 27-241

- (c) **Continuous, day-to-day operation of a certified nonconforming use is required to maintain its nonconforming status. Discontinuance of day-to-day operation for a period of one hundred eighty (180) or more consecutive calendar days shall constitute abandonment of the use. No certified nonconforming use may be reestablished unless either:**

- (1) **The case involves reconstruction, restoration, or reestablishment in accordance with Section 27-243; or**
- (2) **The Planning Board determines (upon written request) that the conditions of nonoperation were beyond the control of the person who was in control of the property during the period of nonoperation. The Planning Board's determination shall be based on satisfactory evidence presented by the person making the request.**

In an affidavit provided by the applicant, signed and dated December 3, 2021, there is an approximate 10-month break in use of the property, prior to the applicant's ownership, and an additional 17-month break in use after his ownership during renovation of the vacant building. The affidavit further provides that the building has been fully leased and occupied as of August 2014. Thus, there was a period longer than 180 consecutive calendar days where day-to-day operations were discontinued.

Section 27-243(c)(1) of the Zoning Ordinance provides a minor exception if the "case involves reconstruction, restoration, or reestablishment in accordance with Section 27-243." But Section 27-243(a)(1)(B) requires that the use be reestablished within one calendar year from the date day-to-day operations ceased:

Where a certified nonconforming use has temporarily ceased operation, either for the sole purpose of correcting Code violations or because the nature of the nonconforming use is seasonal, such use shall be reestablished within one (1) calendar year from the date upon which operation last ceased.

The previous owner discontinued operations to sell the property for a period longer than 180 days. The current owner was arguably allowed to cease operations, in order to correct code violations if he had reestablished the use within one calendar year. But the applicant took 17 months to reestablish the use, that is, longer than the period permitted by Section 27-243(1)(B). The applicant, therefore, has not met the necessary criteria for certification.

Section 27-244

(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 exist east of the subject site, having been constructed at about the same time, and both operate as certified nonconforming uses. A U&O permit is currently pending for the site.

(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 filed U&O Permit 51768-2019-U on November 4, 2019, 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;**

Along with the application and accompanying site plan, the applicant submitted the following documentary evidence in support of the application:

- a. An affidavit from Mr. Myers, Sr. (owner), dated and signed on December 3, 2021, providing, to the best of his knowledge, chronological timeline events for the subject apartment building, including input from two long-term residents. 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. The affidavit further provides that the building has been fully leased and occupied as of August 2014.
- b. The affidavit included input from a nine-year resident and twenty-year resident at 8219 and 8208 Bellefonte Lane, respectively, further affirming 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.

- c. 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.

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. Upon final walk-through, renovation permits were completed by DPIE on May 2, 2014, and the applicant proceeded to rent the apartments. 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), 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. 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 obtained, 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 Planning Board may act on the application, in accordance with Section 27-244(f)(4)(A):

(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 28, 2022, DPIE provided an email (Jeong to Hurlbutt) stating that the subject case does not require a renewed or active stormwater management concept on file, nor does it require a site development concept plan approval letter. DPIE does not oppose the approval of the subject application. Staff further finds that a nonconforming use does exist, but has not continuously operated on the subject site.

DISCUSSION

The evaluation of 8204 Bellefonte Lane Apartments is based on the lack of zoning regulations in place at the time of development in 1960. The development does not have an approved U&O permit; hence, the request for a CNU was filed.

Staff is aware that 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 yet in his possession. After possession of the property by Mr. Myers, the applicant and current owner, 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. Staff finds that the available records, coupled with the development history and nonconforming certification of the surrounding properties, is enough to establish that the use has legally existed, that the applicant has not supplied all available documentation to demonstrate continuous use, and thus should not be certified as nonconforming.

CONCLUSION

While the applicant provided documentation, including an affidavit of his own volition and input from adjacent residents, 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 day-to-day operations, and that the use did not reestablish the use within one year of the renovations. For these reasons, staff recommends DISAPPROVAL of Certification of Nonconforming Use application CNU-12648-2015.