



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

## CERTIFICATION OF NON-CONFORMING USE (CNU-1892-07)

Application	General Data
<b>Project Name:</b> MARVIN DANIELS APARTMENTS I  <b>Location:</b> WESTSIDE OF 58 <sup>TH</sup> AVENUE APPROXIMATELY 425 FEET NORTH OF L STREET  <b>Applicant/Address:</b> MARVIN DANIELS P.O. BOX 5177 CAPITOL HEIGHTS, MARYLAND 20791	Date Accepted: 5/4/2007
	Planning Board Action Limit: N/A
	Plan Acreage: 0.1435
	Zone: R-55
	Dwelling Units: TWO UNITS
	Square Footage: 1,014
	Planning Area: 72
	Tier: Developed
	Council District: 05
	Municipality: Fairmount Hgt.
	200-Scale Base Map: 202NE05

Purpose of Application	Notice Dates
CERTIFICATION OF NON-CONFORMING USE FOR A TWO-FAMILY DWELLING IN THE R-55 ZONE.	Adjoining Property Owners Previous Parties of Record Registered Associations: 2/22/2007 (CB-12-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed: N/A

Staff Recommendation		Staff Reviewer: Laxmi Srinivas	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

September 27, 2007

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Laxmi Srinivas, Senior Planner

SUBJECT: **Certified Nonconforming Use Application (CNU No. 1892-2007)**

REQUEST: **Certification of Nonconforming Use for a Two-Family Dwelling in the R-55 Zone**

RECOMMENDATION: **DENIAL**

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NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated at the top of the cover sheet. The Planning Board also encourages all interested persons to request to become a person of record in this application. Requests to become a person of record should be made in writing and addressed to the Development Review Division at the address indicated above. Please call 301-952-3530 for additional information.

FINDINGS:

A. **Location and Field Inspection:** The subject property, known as 1018 58<sup>th</sup> Avenue, has 50 feet of frontage along the west side of 58<sup>th</sup> Avenue, approximately 425 feet north of L Street in Fairmount Heights. The property is zoned R-55. There is an existing two-family dwelling on the property and it is currently being used as a two-family dwelling. There is one dwelling on the first floor and one dwelling on the second floor and an unfinished basement.

B. **Development Data Summary**

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone(s)	R-55	R-55
Use(s)	Two-family dwelling	Two-family dwelling
Acreage	0.14	0.14

- C. **History:** In 1928, the property was zoned Residential ‘A’ (equivalent to the R-55 Zone). In 1949, the property was rezoned to R-55, which is the present zoning. Changes to the Zoning Ordinance from July 29, 1986, to September 20, 1988, mistakenly permitted two-family dwellings in the R-55 Zone. Council Bill 85-1988 corrected the mistake. Therefore, all two-family dwellings permitted in the R-55 Zone during that period became nonconforming uses.
- D. **Master Plan Recommendation:** The 1993 Approved Master Plan and Sectional Map Amendment for Landover and Vicinity recommends medium suburban uses for the subject property. The Sectional Map Amendment retained the property in the R-55 Zone. The 2002 *General Plan* shows the property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.
- E. **Request:** The applicant requests certification of a two-family dwelling in the R-55 Zone. The R-55 Zone permits only 1 one-family detached dwelling on a lot. The applicant has stated that the property is being consistently used as a two-family dwelling unit.

F. **Surrounding Uses:**

The site is surrounded by the following uses:

**North:** Single-family homes in the R-55 Zone

**East:** 58<sup>th</sup> Avenue and single-family homes in the R-55 Zone

**South:** Single-family homes in the R-55 Zone

**West:** Single-family homes in the R-55 Zone

- 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;**
  - (2) A legal description of the property; and**
  - (3) 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 applicant has stated that he bought the subject property in 2001. At that time, the subject property was being used as a two-family dwelling and there were two tenants renting the property. The previous owner did not obtain certification of the two-family dwelling unit when it became a nonconforming use on September 20, 1988. When the applicant applied for a use and occupancy permit in January 2007, the Permits Division did not find any prior permits for the subject property. 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. A letter from Pepco dated September 14, 2006, stating that the property had two meters installed on August 30, 2004 (Exhibit 1).
2. Lease documents dated September 1, 2003, for two separate units on the subject property (Exhibit 2).
3. Notarized affidavits dated January 25, 2007, from five neighbors. The affidavits state that the subject property has always been used as a multifamily (two-family) dwelling and it has never been used as single-family dwelling. They also state that the property always had two separate meters for gas and electricity. The neighbors have been residents of the adjacent properties from 1947 to 2003 (Exhibit C).

Section 27.107.01, Definitions, of the Zoning Ordinance defines:

A two-family dwelling as either a building containing two dwelling units arranged one on top of another or two attached buildings arranged side by side.

A nonconforming building or structure is not in conformance with a requirement of the zone in which it is located provided that the requirement was adopted after the building was constructed, the building was constructed after the requirement was adopted, and a use and occupancy permit was obtained to validate permits issued in error.

A nonconforming use is defined as a use of any building, structure or land that is not in conformance with a requirement of the zone in which it is located provided that the requirement was adopted after the use was lawfully established, the use was established after the requirement was adopted, and the District Council has validated a use and occupancy permit issued in error.

In this case, the house has been on the property since 1947. The current zoning for the property has been in existence since 1949. Two-family dwellings are not currently permitted in the R-55 Zone. The applicant has not submitted documentation showing that the existing house was legally constructed as a two-family dwelling prior to 1949 and has always been a two-family dwelling. What is most important in the review of a nonconforming use is that the use was legally constructed in accordance with the requirements in effect for the zone at that time. There is no evidence that the two-family dwelling was built as permitted prior to 1949. It continues to have two separate entrances, kitchens and bathrooms.

The applicant has submitted sworn affidavits from the previous owners stating that the property was continuously used as a two-family dwelling. The affidavits clearly indicate that 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. The applicant has also submitted a drawing showing the location of buildings and their use and a surveyor's drawing showing the property location and dimensions. Sworn affidavits are not adequate as evidence that a nonconforming use has been in continuous operation.

## **CONCLUSION:**

Based on the documentary evidence provided by the applicant, staff concludes that the subject property cannot be certified as a nonconforming use with a two-family dwelling. Therefore, staff recommends that the subject application CNU-1892-2007 be denied for a two-family dwelling on the subject property.