



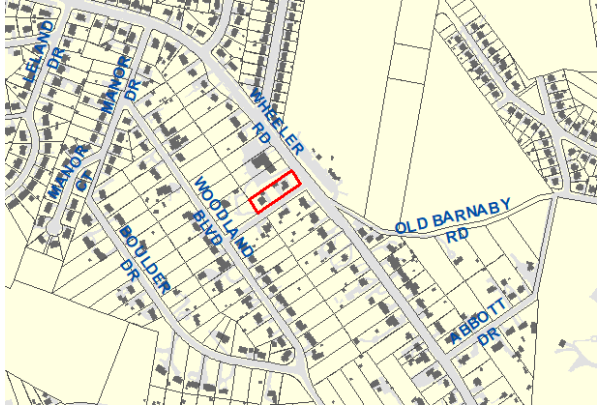
The Maryland-National Capital Park and Planning Commission  
Prince George's County Planning Department  
Development Review Division  
301-952-3530

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

## Certification of Nonconforming Use      CNU-34625-2020

### Wheeler Road

REQUEST	STAFF RECOMMENDATION
Certification of a nonconforming use for two existing dwellings on one lot.	DISAPPROVAL

<b>Location:</b> On the northwest corner of Wheeler Road and Barnaby Lane.			
Gross Acreage:	0.57 acres		
Zone:	R-R		
Gross Floor Area:	N/A		
Parcels:	1		
Planning Area:	76A		
Tier:	Developing		
Council District:	07		
Election District:	12		
Municipality:	N/A		
200-Scale Base Map:	207SE02		
<b>Applicant/Address:</b> Cynthia Bulka 4 Gunston Road Stafford, VA 22554		Planning Board Date:	07/08/2021
<b>Staff Reviewer:</b> Sam Braden, IV <b>Phone Number:</b> 301-952-3665 <b>Email:</b> Sam.BradenIV@ppd.mncppc.org		Planning Board Action Limit:	N/A
		Staff Report Date:	06/24/2021
		Date Accepted:	03/09/2021
		Informational Mailing:	02/26/2021
		Acceptance Mailing:	03/04/2021
		Sign Posting Deadline:	04/27/2021

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/](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-34625-2020  
                    4919 Wheeler Road

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; and
- c.        The requirements of the Prince George's County Zoning Ordinance for certification of a nonconforming use.

**FINDINGS**

1.        **Location and Field Inspection:** The subject property is the site of two dwellings, addressed as 4919 Wheeler Road, Oxon Hill, Maryland 20745. The site is zoned Rural Residential (R-R) and is located on the northwest corner of Wheeler Road and Barnaby Lane. The site contains 0.57 acre, and is recorded among the Prince George's County Land Records in Liber 44119 at folio 132.

According to the applicant's site plan, the site is developed with a two individual dwellings on the same parcel. The primary structure was built in 1951, which fronts on Wheeler Road and has an above grade living area of 2,598 square feet and property land area of 31,084 square feet. According to the Maryland State Department of Assessments and Taxation, the total floor area of this dwelling is 3,920 square feet. The original dwelling, which was once known as 5003 Barnaby Lane, was built in 1941, has an unknown square footage, and now shares the 4919 Wheeler Road address.

2. **Surrounding Uses:** The site is bounded to the north by open space owned by the Maryland-National Capital Park and Planning Commission in the Reserved Open Space Zone, and surrounded on the remaining sides by a church and residential uses in the R-R Zone.
3. **History:** The following information was derived from the applicant's statement of justification (SOJ), received January 21, 2021, and incorporated by reference herein; documentation submitted by the applicant; the Prince George's County Land Records; and from the permit history of the site, as it relates to the use.
  - a. **1940 and 1951:** Structures were built.
  - b. **June 15, 1940:** Deed obtained, recorded in the Prince George's County Land Records.
  - c. **September 16, 1941:** Site recorded as Lot 13 in Barnaby Oaks subdivision, as per plat thereof duly recorded in Plat Book BB No. 8 at folio 10 and Liber 637 folio 179, among the Prince George's County Land Records.
  - d. **December 25, 1954:** Permits were issued for water service connection for both dwellings. Permit SC-0122630-2016 was issued for 4919 Wheeler Road. Permit SC-0122639-2016 was issued for 5003 Barnaby Lane.
  - e. **December 25, 1966:** Permits were issued for a sewer connection for both dwellings. Permit SC-0050460-2016 was issued for 4919 Wheeler Road. Permit SC-0050461-2016 was issued for 5003 Barnaby Lane.
  - f. **August 5, 2009:** Use and Occupancy (U&O) Permit 23542-2009-0 was issued for a day care at 4919 Wheeler Road.
  - g. **August 17, 2015:** Rental license single-family Permit 33148-2015-0 was issued for a single-family residence.
  - h. **September 8, 2016:** Shelly Mills Mason became the personal representative of the Estate of Chester Thomas Mills, Estate No. 16863.
  - i. **June 15, 2020:** Deed was conveyed an undivided one-third interest to Shelly Mills Mason and Jennifer Mills Johnson.
4. **Request:** The applicant is requesting a certification of nonconforming use (CNU) for the residential use of two dwellings on the same parcel of land. According to the Prince George's County Zoning Ordinance, the use may be granted after the building was lawfully erected, or the building was erected after the requirement was adopted and the Prince George's County District Council has validated the building or structure in error. The R-R Zone allows the use of residential dwelling; however there has to be evidence established of continuous use to certify as nonconforming.

The first dwelling of the subject property was originally constructed in 1940 in the One-Family Detached Residential (R-55) Zone, and predates the Zoning Map of 1949. However, the second dwelling was not constructed until 1951, after zoning took effect,

which limits one dwelling per lot; therefore, the permitted uses of the zone would not apply to the second dwelling. Section 12.12 of the Zoning Ordinance for the Maryland-Washington Regional District in Prince George's County, dated November 29, 1949, does not permit the use of more than one building on one lot.

5. **Site Data Summary:**

Zone:	R-R
Acreage:	0.25 acre
Use:	Residential (first floor)
Gross Floor Area:	2,598 sq. ft (total)
4919 Wheeler Road	2,598 sq. ft

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.**

The applicant's SOJ requests certification as nonconforming use, and states that the property was lawfully established prior to zoning, and the use has not changed.

A CNU requires that certain findings be made. Section 27-244 of the Zoning Ordinance sets forth the following specific requirements for a CNU:

**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.**

There is no record of a residential U&O permit for either property. The dwelling that faces the Barnaby Lane predates zoning. The applicant has submitted documented evidence demonstrating that in 2009, a U&O permit for a day care was lawfully established in the dwelling that faces Wheeler Road. The applicant's other evidence does not demonstrate that the property has been occupied and therefore requests the Planning Board's approval to be certified as a nonconforming use with the evidence provided.

**(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, 23542-2009-0, on August 5, 2009, 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 evidence provided in the History finding of this report, the application, and accompanying site plan, the applicant submitted the following documentary evidence in support of the application:

- a. A collection of records for permits and certificates of occupancy, issued between 2009 and 2010 for 4919 Wheeler Road, as previously described in the History finding of this report.
- b. An affidavit from Cynthia S. Bulka, as the applicant at 4919 Wheeler Road.
- c. Additional letters and emails of correspondence from:
  - (1) Cynthia S. Bulka (May 6, 2021), regarding the history and background of 4919 Wheeler Road, having two dwellings on one lot;

- (2) Cynthia S. Bulka (May 27, 2021), providing Washington Suburban Sanitary Commission (WSSC) billing history of 4919 Wheeler Road for both dwellings;
- (3) WSSC (December 2, 2019), confirming account activation in 1954 and continuous service since at least May 3, 1999, noting that their archival limitations prevent additional information.
- d. A list from the Prince George's County Permits and Licenses Application Tracking System showing all permits on record between 2009 and 2010.
- e. A collection of utility bills charged to Emma Ennis and Jet Property Management, LLC from the Potomac Electric Power Company, Washington Gas, and WSSC, between May 1999 and December 2020.

**(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.**

The applicant submitted evidence demonstrating the continuous dwelling at the site by family relative, Emma Ellis, until at least December 2020. However, this measure is only applicable based on compliance with adopted zoning in 1949. This predates the construction of the second dwelling on the lot.

**(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 applicant submitted a house location survey that included a legal description of the property, as well metes and bounds matching the deed description. The submitted site plan shows the exact nature, size, and location of the building; however, it does not show the exact extent of the use within the building.

- (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.**

The applicant submitted a U&O permit issued for both Harris-Payne Daycare and Payne Daycare, at 4919 Wheeler Road for the dwelling that fronts on Wheeler Road. The permit was issued on August 5, 2009, for one dwelling on the lot. There are other U&O permits for both dwellings. The nonconforming status of the property had not been established at time of permitting.

**(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.**

The applicant has not submitted documentary evidence proving the continuity of the use from construction of the second dwelling in 1951. Therefore, 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.**

The applicant submitted a request to the Prince George's County Department of Permitting, Inspections and Enforcement (DPiE) for a building permit application, dated August 25, 2020. Additional documentation was requested by the Permit Review Section, in order to certify the second dwelling as a nonconforming use. For this determination

to be made, the dwelling has to have been existing, prior to when the lot came into zoning, and have been operating as a dwelling without ceasing for more than 180 days from that time to present. Evidence has been provided from 1999 to present in the form of billing records and an affidavit, from the applicant indicating that the dwellings have been in the family since construction. There is no record of any outstanding code violations with DPIE.

## **DISCUSSION**

In accordance with Section 27-244(a)(1) of the Prince George's County Zoning Ordinance, in order to certify the use as nonconforming, the use must have been legally established. The evidence provided by the applicant, the Prince George's County Land Records, and permit history reflect that the dwellings were not established simultaneously. The first dwelling was constructed in 1940 and the second in 1951. The applicant has not provided documentation that the two dwellings have been in continual use since 1951. The family provided an affidavit indicating that the property has not ceased to operate as a dwelling, which included an in-home day care business as an accessory use that was issued a U&O permit. The primary structure that fronts on Wheeler Road was built after the property came into zoning in 1949. Section 12.12, Uses, of the 1949 Zoning Ordinance for the Maryland-Washington Regional District states:

**Every building hereafter erected shall be located on a lot as herein defined; and except as herein provided, there shall be no more than one (1) building on one (1) lot.**

This clearly shows that the dwelling should not have been constructed on the lot, and there is not sufficient evidence to support when the home was initially classified as nonconforming. The home has been conveyed to other members of the family following the death of the homeowner, Chester Thomas Mills. It is also noted that the applicant intends to sell the property.

## **CONCLUSION**

Based on the requirements of Section 27-244 of the Prince George's County Zoning Ordinance for certification of a nonconforming use, sufficient evidence has not been provided to suggest and support the use of two residential dwellings on one parcel was legally established for 4919 Wheeler Road. Per Section 27-118.01(c) of the Zoning Ordinance, not more than one one-family, two-family, or three-family dwelling shall be located on any lot. The site does not demonstrate compliance, due to both dwellings not being established prior to zoning being adopted in 1949. The dwellings were constructed in 1940 and 1951, respectively. Therefore, it is recommended that Certification of Nonconforming Use CNU-26029-2019, 4919 Wheeler Road, Oxon Hill, be DENIED.