

April 26, 2000

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Whitney Chellis, Planner

SUBJECT: **Certified Nonconforming Use Application Nos. 4090-99-U and 4092-99-U**

REQUEST: **Certification of a Church**

RECOMMENDATION: **APPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated above. 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 301-952-3280 for additional information.

FINDINGS:

- A. Location and Field Inspection: The property is known as 3711 and 3715 42nd Avenue in Cottage City. The major portion of the property is located on the northeast side of 42nd Avenue. The remaining portion is located on the southwest side of 42nd Avenue directly across the street.

The property is comprised of six and one-half record lots with a total area of 20,940 square feet. Lots 8-11, Block A and Lot 42 are located on the northeast side of 42nd Avenue and consist of 14,415 square feet. Lots 8 and 9 are improved with a gravel parking compound. Lots 10 and 11 are improved with a one-story building originally constructed in 1929 as a church. Lot 42 is improved with a two-story building (with basement) constructed in 1941 as a single-family dwelling. This portion of the property has 130 feet of frontage on 42nd Avenue. It abuts a 15-foot-wide alley to the northeast, and single-family dwellings are located to the north and south.

The smaller portion of the property, comprised of Lot 17 and part of Lot 18 consists of 6,525 square feet and is located directly across 42nd Avenue. This portion of the property has been exclusively used as a church parking lot since 1975 and consists of 12 parking spaces. It has 45 feet of frontage on 42nd Avenue with single-family dwellings located on all other sides.

- B. Request: The applicant requests certification of a church in the R-55 Zone.
- C. Surrounding Uses: The immediate neighborhood is predominately residential in the R-55 Zone with some commercial uses located along Bladensburg Road, about 150 feet southeast of the subject site. Lots 8-11, Block A and Lot 42 are also located within the Chesapeake Bay Critical Area I-D-O Overlay Zone.
- D. Certification Requirements: Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning 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 specific requirements:

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) certifies that the use is really nonconforming and not an illegal use.**
2. **Application for Use and Occupancy Permit:**
 - a. **The applicant shall file for a use and occupancy permit.**
 - b. **Along with the application and accompanying plans, the applicant shall provide the following:**
 - (1) **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.

- (2) 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 non-operation 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.**
- (3) Specific data showing:**
 - (i) The exact nature, size and location of the building, structure and use.**
 - (ii) A legal description of the property.**
 - (iii) The precise location and limits of the use on the property and within any building it occupies.**
- (4) 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.**

With the enactment of CB-23-1993, the church use became nonconforming. Section 27-241(f)(1)(A) of the Zoning Ordinance allows for the administrative certification of non-conforming uses under certain circumstances. A criterion being the existence of a valid use and occupancy permit. The absence of a use and occupancy permit for the church use on Lot 42 has necessitated this application.

The church use was first established on Lots 8-11, Block A in 1929 by the Cottage City Mennonite Church. Expansion continued under their ownership to the present church configuration. A use and occupancy permit for the church operation on Lots 8-11, Block A was issued in 1969. Lot 42 was purchased in 1968 and converted for Sunday school purposes and other religious activities. A use and occupancy permit was never issued for the church use on Lot 42. In 1975, the church received a permit for the use of Lot 17 and part of Lot 18 for ancillary church parking.

In 1995, the Cottage City Mennonite Church turned over the subject property to the Overcoming Power Bible Way Church, the applicant for this nonconforming certification request. A site inspection reveals development consistent with the applicant's site plan and statement of justification.

- E. Documentary Evidence: In order for this application to be certified, the use must predate August 31, 1993. The applicant has submitted the following documentation, which establishes existence of the church and its continuous use:

1. Use and Occupancy Permit No. 684898-U dated 1969 for church services on Lots 8-11, Block A, 3711 42nd Avenue.
2. Building Permit No. 2265-74C for the construction of an auxiliary church parking lot on Lot 17 and part of Lot 18, issued 1975.
3. Letter from Town of Cottage City, Commissioner Frederick Harter, dated March 6, 2000, attesting to the continued use of the church buildings at 3711 and 3715 42nd Avenue from August 31, 1993 to the present.
4. Notarized statement from Lewis Good, Pastor of Cottage City Mennonite Church 1970 to 1979 and Bishop/Overseer from 1978-present, attesting to the continuous use of the church buildings and parking compound.
5. Service liturgies dated from 1995, 1997-1999.
6. State Department of Assessments and Taxation memorandum dated August 11, 1975, granting tax exempt status for Lot 42, 3715 42nd Avenue.
7. Utility bills for 3711 (3713) and 3715, 42nd Avenue, indicating residential and nonresidential uses.

CONCLUSION:

Based on the preponderance of evidence submitted by the applicant and the lack of contradictory evidence from other sources, the subject church was established prior to August 31, 1993, and has been in continuous use since that time. Therefore, it is recommended that this application be APPROVED for the requested certified nonconforming use.