



PGCPB No. 13-115

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File No. CNU-11100-13

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-11100-13, American Legion Post #28, requesting a certification of a nonconforming use for a mobile home trailer in the R-T Zone in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on October 10, 2013, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The property, American Legion Kennedy-Larimer Post 28, located at 3510 Powder Mill Road in Beltsville, is located on the west side of Powder Mill Road (MD 212), approximately 600 feet north of its intersection with Cherry Hill Road. It is currently known as Parcel 61 which has a net lot area consisting of approximately 6.43 acres in the Townhouse (R-T) Zone. The property is currently improved with an asphalt parking lot, an existing foundation of a 4,800-square-foot facility (to be reconstructed), a 750-square-foot trailer, and an existing 275-square-foot shed. The site has direct access to MD 212, a master plan arterial facility with an ultimate right-of-way width of 130 feet.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-T	Unchanged
Acreage	6.43	Unchanged
Use(s)	Residential (property manager's residence)	Unchanged

C. **History:** The American Legion Post #28 has been in operation on the property since approximately 1948, the main 4,800-square-foot facility was destroyed by fire in 2005, and in 2005, Raze Permit 22720-2005-RZ was approved by Prince George's County to remove what was left of the existing building and foundation. The applicant has a pending approval of a special exception application, SE-4682, to operate a private club on a portion of the property consisting of 3.15 acres. It was during this process that it was discovered that the location and use of a mobile home on the subject property are not permitted in the R-T Zone.

In a memorandum dated September 13, 2012, the Permit Review Section noted that the mobile home should either be certified as a nonconforming use or obtain approval of a special exception. However, the residential use tables provided within Section 27-441(b)(6) of the Zoning Ordinance do not permit a mobile home as a one-family dwelling or the parking of a mobile home in general within the R-T Zone through the special exception process.

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On February 23, 2012, the Planning Board approved Preliminary Plan of Subdivision 4-11006 (PGCPB Resolution No. 12-12) for the property. The preliminary plan application was for the purpose of subdividing Parcel 61 into 17 lots and 3 parcels. Two of the parcels (Parcels A and B) are proposed for the future development of 17 new residential townhouses. The remaining parcel, 3.15 acres, is proposed for the redevelopment of a 4,800-square-foot American Legion and maintaining an existing 750-square-foot trailer and 264-square-foot shed.

At the time of preliminary plan, the Planning Board also approved Type I Tree Conservation Plan TCPI-012-11 and a Variation from Section 24-121(a)(3) of the Subdivision Regulations. The variation request was for the purpose of authorizing direct vehicular access to Powder Mill Road (MD 212), a master plan designated arterial roadway. The Planning Board's actions for Preliminary Plan 4-11006 are contained in PGCPB Resolution No 12-12. The preliminary plan is valid until March 22, 2014.

- D. **Master Plan Recommendation:** The 2010 *Approved Subregion 1 Master Plan and Sectional Map Amendment* (Subregion 1 Master Plan and SMA) retained the subject property in the R-T Zone. This application is consistent with the 2002 *Prince George's County Approved General Plan* Development Pattern policies for corridor nodes in the Developing Tier and does not violate the General Plan's growth goals for the year 2025, based upon review of Prince George's County's current General Plan Growth Policy Update.
- E. **Request:** The applicant requests certification of an existing 750-square-foot mobile home in the R-T Zone because the development regulations were changed or adopted after the use was lawfully established and the mobile home therefore became nonconforming. On November 24, 1975, the Zoning Ordinance was amended to prohibit mobile homes in all zones in Prince George's County except the R-M-H (Planned Mobile Home Community) Zone. In 1979, the Zoning Ordinance was further amended to allow mobile homes in certain residential zones, (Open Space, O-S; Residential-Agricultural, R-A), by special exception approval provided that the mobile homes are used for residential purposes only, are situated on a concrete platform, are securely anchored and tied down with the wheels removed, and they meet the specific special exception criteria contained within Section 27-528.5 of the Zoning Ordinance.
- F. **Neighborhood and Surrounding Uses:** The applicant submits that the property is located within a residential neighborhood that is bounded by Powder Mill Road (MD 212) to the south, Cherry Hill Road to the west, and Calverton Boulevard to the north and east. High Point High School is located on the south side of Powder Mill Road directly across from the subject property.

The property is surrounded by the following uses:

- North—** Multifamily dwelling units/condominiums in the R-30 (Multifamily Low Density Residential) Zone.
- South—** The remainder of Parcel 61 which is currently undeveloped, but has an approved preliminary plan for the new development of 17 townhouses in the R-T Zone.

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Beyond is a six-store commercial shopping center in the C-S-C (Commercial Shopping Center) Zone and the Powder Mill Road (MD 212) right-of-way.

East— The Powder Mill Road (MD 212) right-of-way, and beyond High Point High School in the R-R (Rural Residential) Zone.

West— Multifamily dwelling units/apartments in the R-30 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 the use 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 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 and not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division).**

(b) Application for use and occupancy permit.

- (1) The applicant shall file for a use and occupancy permit 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;**
- (B) Evidence that the nonconforming use has not ceased to operate for more than one hundred eighty (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 one hundred eighty (180) consecutive calendar days were beyond the applicant's and/or owner's control, were for the purpose**

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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;**
 - (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;**
- (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: According to the applicant's statement of justification and limited documentation, the subject property at 3510 Powder Mill Road was in use as a caretaker's residence prior to 1975 when the location of mobile homes in all zones except the R-M-H Zone was discontinued. The statement of justification cites that the trailer, used as the property manager's residence, has existed on the site since 1965 and the American Legion has been using the trailer as an interim meeting space since the main building was destroyed by fire a few years ago. In a memorandum dated September 13, 2012, the Permit Review Section noted that the mobile home should be certified as a nonconforming use. The current residential use tables provided within Section 27-441(b)(6) of the Zoning Ordinance do not permit a mobile home as a one-family dwelling or the parking of a mobile home in general within the R-T Zone even through the special exception process.

Therefore, in accordance with Section 27-244(f) of the Zoning Ordinance, 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. Maryland-National Capital Park and Planning Commission (M-NCPPC) aerials for the years 1965, 1977, 1980, 1984, 1993, 1998, 2000, 2005-2009, and 2011 (Exhibit 1) all showing the mobile home on the property.
2. A letter from the Washington Suburban Sanitary Commission (WSSC) dated May 18, 2013 citing continuous service to the subject property since January 1, 1970 (Exhibit 2).

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3. A notarized letter from Robert L. Queen dated April 22, 2013 as to the use of the mobile home as a residence by the occupant's family from 1969 to the present (Exhibit 3).
4. Photos of the mobile home (through the years) (Exhibit 4).
5. An ordinance to permit the use as a club house by the Prince George's County District Council dated February 18, 1948 (Exhibit 5).
6. A use and occupancy permit application, 11100-00-2013, for 3510 Powder Mill Road (Exhibit 6).

DISCUSSION

The most compelling evidence provided are the aerial photos of the property that show the trailer on the subject property in 1965 and the notarized letter from Robert L. Queen dated April 22, 2013 as to the use of the mobile home as a residence by the occupant's family from 1969 to the present. Both documents confirm the existence of the trailer on the property and the residential use prior to November 24, 1975 when mobile homes were prohibited in all zones, except the R-M-H Zone. The other evidence, which consists of a letter from WSSC dated May 18, 2013, citing continuous service to the subject property since January 1, 1970, the ordinance allowing the use of a club house by the Prince George's County District Council dated February 18, 1948, and other photographs of the mobile home further documents the existence of a residential use of the trailer at the subject property and supports the applicant's claim that the trailer located at 3510 Powder Mill Road has been in continuous use prior to 1975 when the nonconforming use began.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted application.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

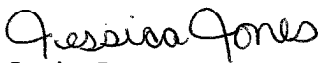
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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Shoaff, Geraldo and Hewlett voting in favor of the motion at its regular meeting held on Thursday, October 10, 2013, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 31st day of October 2013.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 10/15/13