

PGCPB No. 16-136

File No. CNU-45423-2016

## R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-45423-2016 requesting certification of a nonconforming use for a church on less than one acre in the One-Family Detached Residential (R-55) 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 December 15, 2016, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The property is located east of Elsa Avenue at the intersection of Highland Park Drive. The property consists of four individual lots addressed as 1201 Elsa Avenue (Lots 22, 23) and 1203 Elsa Avenue (Lots 20, 21). The four lots have a net lot area of approximately 0.1390 acre and are zoned One-Family Detached Residential (R-55). The properties have existed and been used for religious purposes since the 1950s. A structure has existed on the site since 1952. The current brick structure is noted as being built in 1965. The adjoining undeveloped property, Lots 13-19, is owned by Prince George's County. There are asphalt drives providing egress/ingress via Elsa Avenue for Lots 20 and 21 and via Highland Park Drive for Lots 22 and 23.

B. **Development Data Summary:**

|                   | EXISTING                 | APPROVED  |
|-------------------|--------------------------|-----------|
| Zone(s):          | R-55                     | Unchanged |
| Lots/Parcels:     | 4 (Lots 20, 21, 22 & 23) | Unchanged |
| Acreage:          | 0.1390                   | Unchanged |
| Gross Floor Area: | 3,685 sq. ft.            | Unchanged |
| Use(s):           | Church                   | Unchanged |

C. **History:** A Certificate of Occupancy No. 51686-1983-00, dated April 4, 1984, for 1201 Elsa Avenue for a Church use was issued by the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE).

D. **Request:** The applicant requests certification of a nonconforming use for a church and associated parking in the R-55 Zone. Because zoning regulations were changed or adopted after the permitted use was lawfully established, the use became nonconforming. The nonconforming status began August 31, 1993 when Prince George's County Council Bill CB-23-1993, amended, the Prince George's County Zoning Ordinance to require a special exception in the R-55 Zone.

- E. **Surrounding Uses:** The surrounding area is developed with residential uses. The site is surrounded by the following uses:

**North—** Annapolis Road (MD 450) and undeveloped single-family residential lots zoned R-55 owned by Prince George's County.

**South—** Highland Avenue and properties improved with single-family residences zoned R-55.

**East—** Fiji Avenue and properties improved with single-family residences zoned R-55.

**West—** Elsa Avenue properties improved with single-family residences zoned R-55.

- F. **Definition of a Nonconforming Use:**

- (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.

**Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. Section 27-244 of the Prince George's County 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 an application 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 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 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 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**—In accordance with Section 27-244(f), the Prince George's County 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. Per the applicant's documentation, a church has operated at the subject property since some time in the 1950s.

When the applicant applied for a use and occupancy (U&O) permit, the Permit Review Section staff did locate a U&O permit, however, the church use was discontinued for more than **one hundred eighty (180) consecutive calendar days**. 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 **conditions of nonoperation for more than one hundred eighty (180) consecutive calendar days were beyond the applicant's and/or owner's control**.

The applicant submitted the following documentary evidence in support of the application for the nonconforming use status of a church in the R-55 Zone:

1. Building permit application CNU-45423-2016-00 for Prayer and Word Church of Our Lord Jesus Christ.
2. Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) Certificate of Occupancy, 51686-1983-00, dated April 4, 1984, for 1201 Elsa Avenue for a Church use.
3. Permit History from April 12, 1983 through June 9, 2011 citing permit types and work description, while owned by the New Strait Gate Baptist Church.
4. Correspondence from Randolph Perrin, Principal Broker, Washington Area Properties confirming the property was listed for sale 2013 to 2016.
5. Metropolitan Regional Information Systems (MRIS) Homes advertisement of 1201 and 1203 Elsa Avenue church property for sale by Randy Perrin Real Estate, LLC.
6. Deed dated August 20, 1963, conveying property (Liber 2866, page 232) from Coreen Johnson to the Trustees of Christian Tabernacle.
7. Deed dated March 30, 1964, conveying property (Liber 3043 page 422) from Cockrell/Jackson to the Trustees of Christian Tabernacle, United Holy Church of America.
8. Deed dated December 15, 1997, citing the name change from Christian Tabernacle United Holy Church to Christian Tabernacle.
9. Deed dated March 5, 2007, conveying property from Christian Tabernacle to the New Strait Gate Baptist Church.
10. Deed dated April 11, 2016, conveying property from the New Strait Gate Baptist Church to the Prayer and Word Church of Our Lord Jesus Christ, Incorporated.

11. E-mail from Michelle Hughes, M-NCPPC Permit Review staff, confirming receipt of documentation of parking requirements.
12. The Maryland-National Capital Park and Planning Commission (M-NCPPC) and Maryland State Archives aerial photos from 1952 and 1957 showing a building on the subject property and associated e-mail correspondence detailing the images.
13. Maryland State Assessment Database Real Property Search for 1201 and 1203 Elsa Avenue.
14. Correspondence from Debbie Poole citing communication with both Pepco and the Washington Suburban Sanitary Commission (WSSC). E-mail communication from WSSC citing service for the property through March 2012.
15. Affidavit of Earl Britt noting that the subject property has been used for public worship since its construction in 1952.
16. Affidavit of Jacqueline McEwan, Overseer, noting that the subject property has been used for public worship since its construction.
17. Affidavit of Phillip Watson, citing that he conducted a neighborhood survey and produced a spreadsheet regarding the knowledge and support of the Church located at 1201 Elsa Avenue.
18. Christian Tabernacle United Holy Church history, pictures (1997–2007) and programs (1997–2001).
19. Letters from Maryland elected officials congratulating Christian Tabernacle United Holy Church on their 60th Anniversary celebration.
20. Internet page of Christian Tabernacle United Holy Church and Facebook comments from Paul Cleveland Jr.

The applicant has submitted documentary evidence demonstrating the legal and continuous existence of the nonconforming use. The operation of the subject property as church continued until February 2013 when the property was placed for sale and the New Strait Congregation vacated the building, thus causing a 180-day break in continuous use.

## DISCUSSION

The aerial photos specifically provide visual evidence that the subject property was in existence in 1952, 41 years prior to the adoption of County Council Bill CB-23-1993, which requires a special exception for a church in the R-55 Zone. The applicant has provided a plethora of documents, such as

property deeds, letters from church officials, service letters from utility companies, and church documents, clearly demonstrating the use of the subject property as a church and for religious purposes prior to August 31, 1993 when the use became nonconforming. There is evidence that the subject property did cease operating as a church (or for religious purposes) while it was in the process of being sold. However, because the property was vacant while being sold and had a house other than a church from February 2013 to April 2016, when the property was purchased by the Prayer and Word Church Congregation the **conditions of nonoperation for more than one hundred eighty (180) consecutive calendar days were beyond the applicant's and/or owner's control.** The applicant has proactively sought to legally use the subject property as a church, as it has been used as such since the 1950s by securing permits for the completion of outstanding interior repairs and a current valid Use and Occupancy permit.

#### CONCLUSION

The applicant/owner is requesting a new U&O permit for a church as a nonconforming use in a residential zone on a property less than one acre. The subject property was used and is permitted for use as a church in accordance with the requirements of the Zoning Ordinance prior to August 31, 1993. The use as a church did cease operation for more than 180 consecutive calendar days because the property was being sold by the New Strait Gate Baptist Church. This circumstance of nonoperation was beyond the current applicant/owner's control because they did not own the property. Since purchasing the property, Prayer and Word Church of Our Lord Jesus Christ, Inc., has taken corrective actions to address the code violations and obtain a valid U & O to use the property for religious purposes. As such, the conditions of nonoperation for 180 consecutive calendar days were beyond the applicant/owner's control.

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject property 1201 and 1203 Elsa Avenue (Lots 20, 21, 22, and 23) was and has maintained use as a church (religious purposes) in accordance with the requirements of the Zoning Ordinance in effect prior to August 31, 1993.

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.

\* \* \* \* \*

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 Geraldo, with Commissioners Washington, Geraldo, Bailey, Doerner and Hewlett voting in favor of the motion at its regular meeting held on Thursday, December 15, 2016, in Upper Marlboro, Maryland.

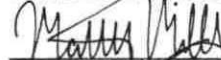
Adopted by the Prince George's County Planning Board this 15th day of December 2016.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Planning Board Administrator

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APPROVED AS TO LEGAL SUFFICIENCY.



M-NCPPC Legal Department

Date

12/16/16