

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-46571-2014-02 requesting certification of a nonconforming use for a church on less than one acre in the 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 17, 2015, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject properties consist of three lots, identified as Lots 21, 22, and 1, are located on the north side of Eastern Avenue, approximately 217 feet west of Varnum Street, in the North Woodridge/Avondale neighborhood. Lots 21 and 22 are zoned One-Family Detached Residential (R-55). Lot 21, 4601 Eastern Avenue, is developed with a two-story brick building with a basement, which is to be used as a church and sanctuary. Lot 22, 4603 Eastern Avenue, is developed with a two-story brick building with a basement, used as a rectory. Lot 1 is zoned Commercial Shopping Center (C-S-C) and is undeveloped. There is no vehicular access to the property. All parking is provided off-site. Both buildings were previously used for religious purposes.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	R-55	Unchanged
Lots/Parcels	3 (Lots 21, 22 & 1)	Unchanged
Acreage	0.4755	Unchanged
Use(s)	Church and Rectory	Unchanged

C. **History:** The building located at 4601 Eastern Avenue was constructed in the 1940s. The Maryland-National Capital Park and Planning Commission (M-NCPPC) has on file an unsigned Permit (2091-U) from 1957 for 4601 Eastern Avenue, to the North Hebrew Congregation for a “social and educations building.” The building located at 4603 Eastern Avenue was constructed in 1962 per the Prince George’s County Assessment Office. The April 6, 1962 assessment record indicates a “church use” for the property.

The North Hebrew Congregation purchased the properties in 1953 and used the buildings for religious purposes until it sold the properties to Nicheiren Shoshu of America in 1968, which used the buildings for religious purposes until the buildings were sold to the Washington Baptist Seminary in 2014.

D. **Request:** The applicant requests certification of a nonconforming use for a church 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 County Council Bill CB-23-1993 amended the Prince George's County Zoning Ordinance to require a special exception for a church in the R-55 Zone.

- E. **Surrounding Uses:** The surrounding area is developed with a mix of commercial, retail, and residential uses. The site is surrounded by the following uses:

North and East — Properties improved with single-family residences zoned R-55 and a parking lot zoned C-S-C.

South and West— Properties located within the boundaries of the City of Mount Rainier, MD improved with a gas station zoned C-S-C within the Gateway Arts District Development District Overlay Zone.

- F. **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 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 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 on 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) 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. According to the applicant's documentation, a church has been operated at the subject property since some time in the 1950s when the building was constructed.

When the applicant applied for a use and occupancy (U&O) permit, the Permit Office staff was not able to locate an original U&O permit. 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 for the nonconforming use status of a parking compound:

1. State Department of Assessment & Taxation dated August 3, 1988 for 4601 Eastern Avenue.
2. State Department of Assessment & Taxation dated August 3, 1988 for 4603 Eastern Avenue.

3. Nichiren Shoshu True Buddhism webpage, www.nst.org, dated April 14, 2015.
4. Parking agreement dated June 3, 1985 between the Kay Management Company and the Nichiren Shoshu (note: This was a non-transferable agreement).
5. Letter from Washington Suburban Sanitary Commission dated March 24, 2015 citing service since June 1, 1962 for 4601 Eastern Avenue and August 1, 1955 for 4603 Eastern Avenue.
6. PEPCO bills January 2014–October 2014 for 4601 Eastern Avenue.
7. Washington Suburban Sanitary Commission bills dated September 27, 2013–October 4, 2014 for 4601 Eastern Avenue and 4603 Eastern Avenue.
8. Deed dated November 25, 2014 reflecting the conveyance of the property from Nichiren Shoshu of America to Washington Seminary.
9. Deed dated July 1, 1968 reflecting the conveyance of the property to Nichiren Shoshu of America.
10. An unsigned permit for the North Hebrew Congregation (Permit 2091U).
11. Letter from Mayor Miles identifying Sokka as existing prior to November 30, 2004.
12. Permit History for 4601 Eastern Avenue and 4603 Eastern Avenue.
13. Affidavits from neighboring residents certifying that both 4601 Eastern Avenue and 4603 Eastern Avenue have operated a church with a private school at the existing location prior to 1993:
 - a. Charles B. Jackson, dated 3/22/15
 - b. Ernest Brown, dated 3/23/15
 - c. Cheryle Williams, dated 3/22/15
 - d. Ariel Harris, dated 3/23/15
 - e. Ellsworth Brewen, dated 3/23/15
 - f. Yvette Kelley, dated 3/22/15
 - g. Rev. Wm. Roman Evans, dated 3/22/15
 - h. Crystal Hundley, dated 3/22/15
 - i. Morris Shearin, dated 3/30/15
 - j. Dexter Nutall, dated 3/27/15
14. M-NCPPC aerial photo from 1965 showing the subject property.

DISCUSSION

The aerial photos specifically provide visual evidence that the subject property was in existence in 1965, approximately 30 years prior to the adoption of CB-23-1993, which requires a special exception for a church in the R-55 Zone. Residents have expressed a concern about the lack of on-site parking. The development of the property predates 1955 as a church. Given that the existing buildings continue to be used in their original configuration, no parking is required, just as in 1953 when the property was developed. The aerial photos provide evidence that parking was never an issue for the subject property because of the agreement with Kay Management Company to use the parking lot to the rear of the properties. However, the parking agreement was not transferable to the new owner and other solutions are proactively being sought that include parking agreements with a neighboring church located on the Washington, DC side of Eastern Avenue and the easing of parking restrictions along the northeast side of Eastern Avenue fronting the subject property by the District of Columbia Government. The applicant is being proactive to address all parking issues. The applicant has provided a plethora of documents such as property deeds, service letters from utility companies, and affidavits from local residents all which clearly demonstrate 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 no evidence that the subject property ceased operating as a church (or for religious purposes). The applicant has proactively sought to legally use the subject property as a church, as it has been used since the 1950s.

CONCLUSION

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 Lots 21 and Lot 22 were used as a church 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 Bailey, seconded by Commissioner Washington, with Commissioners Bailey, Washington, Geraldo and Hewlett voting in favor of the motion, and with Commissioner Shoaff temporarily absent at its regular meeting held on Thursday, December 17, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 7th day of January, 2016.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

PCB:JJ:IRT:rpg