

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed Certified Nonconforming Use CNU-26124-2013 requesting certification of a nonconforming use for a church 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 July 16, 2015, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The square shaped property is located south of Marlboro Pike, east of Opus Avenue, and west of Pacific Avenue. The subject property, identified as Lots 1 through 15, 102, and 103, has a net lot area of approximately 0.96 acre. The property, known as 5101, 5103, and 5105 Marlboro Pike, is improved with an attached one-story brick building and a 25-space parking lot. The building houses two uses, a dental office (5105) that has a gross floor area of 1,123 square feet and a church (5101 and 5103) that has a gross floor area of 5,105 square feet. The subject property is zoned One-Family Detached Residential (R-55). Access to the development is provided egress/ingress via Marlboro Pike, Opus Avenue, and Pacific Avenue.

B. **Development Data Summary:**

	<b>EXISTING</b>	<b>APPROVED</b>
Zone(s):	R-55	Unchanged
Lots/Parcels:	17 (Lots 1 through 15, 102, 103)	Unchanged
Acreage:	0.9570	Unchanged
Gross Floor Area:	5,244 sq. ft.	Unchanged
Use(s):	Church	Unchanged

C. **History:** Constructed in 1962, the subject property, zoned for commercial uses, was used for medical offices and general retail uses. The permits history indicates that a permit for the adjacent dental office (8869-92-U) was issued December 15, 1992 for 5105 Marlboro Pike. This use and occupancy (U&O) permit continues to be valid. There are two previous permits for a church with 80 seats, Permit 4891-97-U was issued on June 24, 1997 and Permit 3656-99-U was issued by The Maryland-National Capital Park and Planning Commission (M-NCPPC) on May 13, 1999. The property was rezoned from the Commercial Shopping Center (C-S-C) Zone to the R-55 Zone via the 2009 *Approved Marlboro Pike Sector Plan and Sectional Map Amendment* (Marlboro Pike Sector Plan and SMA).

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 after the

adoption of the Marlboro Pike Sector Plan and SMA, which rezoned the property from C-S-C to R-55. The Prince George's County Zoning Ordinance requires 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—** Marlboro Pike and undeveloped properties zoned R-55 and the Oakcrest Community Center and Country Club, zoned Reserved Open Space (R-O-S).
- South—** Properties improved with single-family residences and vacant land zoned R-55.
- East—** Pacific Avenue and properties improved with single-family residences and vacant land zoned R-55.
- West—** Opus Avenue and vacant property zoned Mixed Use–Infill (M-U-I) and Multifamily Medium Density Residential (R-18).

- 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), 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. According to the applicant's documentation, the subject property has operated as a church since 1999. The most recent occupant has operated a church at this location since 2005, when it was purchased by the current owner.

When the applicant applied for a U&O permit, the Permit Review Section did locate the original U&O permit; however, the change in tenancy requires a new U&O. 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 operation of a church in the R-55 Zone:

1. Prince George's County Department of Inspections and Permits, Division of Building Inspection Permit, 3656-1999-00 dated May 14, 1999 for 5103 Marlboro Pike Capitol Heights, MD 20743, Lots 1-4, Block 1. This includes a site plan for use and occupancy that indicates a church and dental office use at the subject property.
2. Lease for the Gospel Faith Mission International dated July 1, 2005.
3. Prince George's County Department of Inspections and Permits, Division of Building Inspection, permit application and staff comment documents dated August 6, 2013. These documents illustrate the various permit activities from 1999 through 2013.
4. Washington Gas discontinuance notices for 5101 Marlboro Pike dated November 9, 2010 and November 8, 2011.
5. Accounting statements – Customer Cash App – Billview January 6, 2011 through April 2, 2015.
6. Utility account document dated February 28, 2013 through December 1, 2014.
7. Handwritten payment records for Gospel Faith Mission International, 5103 Marlboro Pike, dated January 28, 2010 through February 5, 2014.
8. Handwritten payment receipts for GoFaMInt dated January 29, 2009 through February 5, 2014.
9. Bank drafts dated June 19, 2011 and August 25, 2013 paid to Pastor Peter Odagbodo.
10. Notarized affidavit from Peter Odagbodo attesting that 5103 Marlboro Pike has been occupied and used as a church since 2005.
11. Miscellaneous church bulletins and celebration and funeral programs dated November 2005 through September 2013.
12. State Department of Assessment and Taxation Real Property database and Prince George's County property tax inquiry documents citing ownership.

## DISCUSSION

The subject property was downzoned from C-S-C to R-55 after the adoption of the Marlboro Pike Sector Plan and SMA effective November 17, 2009. Permit 3656-99-U was issued on May 13, 1999 by

M-NCPPC for a church located at 5103 Marlboro Pike. Since that time, various owners have applied for permits that include daycare and retail uses. However, there is no evidence to indicate that these uses operated at the subject property since the use became nonconforming. The applicant has provided a U&O site plan that indicates approval for a dental office as of December 15, 1992 and two approvals for a church with 80 seats dated June 24, 1997 and May 13, 1999.

The applicant has provided evidence to support their assertion of legal use prior to the use becoming nonconforming in November 2009. The applicant has provided service letters from utility companies and church documents demonstrating the use of the subject property as a church. There is no evidence that the subject property ceased operating as a church at any time since becoming nonconforming.

#### CONCLUSION

Based on evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that 5101–5103 Marlboro Pike is currently used as a church in accordance with the requirements of the Zoning Ordinance in effect prior to November 17, 2009. There is also no evidence to suggest a lapse of continuous use since that time.

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 Geraldo, with Commissioners Washington, Geraldo, Bailey, Shoaff, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 16, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of July, 2015.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator

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