

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-3658-2008 requesting certification of non-conforming use for a church in R-55 and C-O 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 February 12, 2009, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, referred to as District Heights Church of Christ, is located in the northeast quadrant of Silver Hill Road and Marlboro Pike, also known as 5922 Marlboro Pike. The site contains .9774 acre and is developed with a church and associated parking area. Access to the property is provided from a one-way driveway from Marlboro Pike and a two-way driveway from Silver Hill Road. The property is not within the municipal boundaries of District Heights.

B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone	R-55 and C-O	Unchanged
Acreage	.9774	Unchanged
Use	Church	Unchanged
Lot Coverage	100%	Unchanged

C. **History:** The subject property was included in the Regional District on November 29, 1949 and placed in the Rural Residential (R-R) Zone. On January 3, 1968, the District Council approved Zoning Map Amendment ZMA-7231, which rezoned approximately 14,400 square feet of the property fronting on Marlboro Pike to the Commercial Office (C-O) Zone. The remainder of the property stayed in the R-R Zone. The 1986 *Adopted Sectional Map Amendment for Suitland-District Heights and Vicinity, Planning Areas 75A and 75B* subsequently rezoned the back portion of the property from R-R to One-Family Detached Residential (R-55). At the time the structure was constructed on the property, the total site area measured 1.68 acres. Subsequent to the SMA, the State Highway Administration (SHA) required an additional right-of-way (ROW) for Silver Hill Road which reduced the acreage of the property to 42,575 square feet or .9774 acre. The use became nonconforming on August 31, 1993 when the Zoning Ordinance was amended to require a special exception for churches on lots less than one acre in the R-55 Zone. The applicant applied for a use and occupancy permit on February 6, 2008, and was denied because no prior use and occupancy permit for the property could be found.

- D. **Master Plan Recommendation:** The 1985 master plan for Suitland-District Heights and vicinity recommends medium suburban residential land use at up to 6.7 dwelling units per acre.
- E. **Request:** The applicant requests certification of a church that was built prior to 1993. Because development regulations in the R-55 Zone were adopted after the use was established, the church became nonconforming. Section 27-441(b), Table of Uses, was amended on August 31, 1993 pursuant to County Council Bill CB-23-1993, which required a special exception for churches located on less than one acre in the R-55 Zone. It is noted that had SHA not taken a portion of the subject property for road improvements the church use would be permitted by right, subject to detailed site plan approval.
- F. **Surrounding Uses:** The site is surrounded by the following uses:
- North:** Silver Hill Road right-of-way
South: Across Marlboro Pike, various commercial uses in the C-S-C Zone
East: Single-family dwellings in the C-O and R-55 Zones
West: Across Silver Hill Road, a church in the R-T 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 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)(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) 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)(1) **The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**
- (b)(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: The subject property became part of the Regional District in 1949. According to deed records, the immediate past owners, 218 Temple Holding Corporation, purchased the property in 1957 from Puffenberger and Moore, Inc. who had acquired the property from Harry and Gladys Fowler in 1953. The Fowlers had been deeded the property in 1915 by Caroline Claggett. It is unclear as to when the structure was actually constructed; however, aerial photography from 1965 indicates the building, in its current configuration, on the property. Under the ownership of 218 Temple Holding Corporation, the building was referred to as the Seat Pleasant Masonic Temple. The applicant leased the property from the Masons from 1989 until 2002, at which time the church purchased the property on March 13, 2002. When the applicant applied for a use and occupancy permit on February 6, 2008, the Planning Information Services staff could not verify that that the church was built in accordance with requirements in effect at the time of construction because the Department of Environmental Resources (DER) could not locate original use and occupancy permit records for the address associated with the church use. 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. Deed dated April 9, 1953 granting the subject property to Puffenberger and Moore, Inc. from Harry E. Fowler and Gladys E. Fowler.
2. Deed dated October 25, 1957 granting the subject property to 218 Temple Holding Corporation from Puffenberger and Moore, Inc.
3. Plat with surveyor's certificate dated December 8, 1965 and May 12, 1972 showing the acreage of the subject property at 1.68 acres.
4. Rental agreements indicating the church commenced services at the subject property on April 16, 1989.
5. A real property sales agreement signed by the purchaser (District Heights Church of Christ) and seller (Two Eighteen Temple Holding Corporation) December, 2001.
6. A letter from Potomac Electric Power Company (PEPCO) addressed to District Heights Church of Christ dated October 20, 2008, indicating an account at the subject property's address was opened March 8, 2002 and is still active.
7. An affidavit by the treasurer of the District Heights Church of Christ indicating that the church has operated on a continuous basis with no lapse in operations since the signing of the original rental agreement with the 218 Temple Holding Corporation in 1989 through to the present time.
8. Personal property returns for the State of Maryland indicating that the church commenced activities on January 30, 1989.
9. Various bulletins dated 1989 to 2008.

Discussion: The applicant has not been able to definitively ascertain that the church use was lawfully established because the date the structure was constructed is unknown. However, there is a strong presumption that the original structure (which has not been expanded since its construction) most likely did conform to zoning requirements in place when it was built. In 1949, when the property was included in the Regional District, it was originally zoned R-R. The applicable requirements for that zone have not changed over time. The Zoning Ordinance in effect at the time prescribed the following setback and lot coverage requirements for the R-R Zone:

Front: 25 feet from front street line
Rear: 20 feet from rear property line
Side: A total of 17 feet in width (9/8)
Lot coverage: 25%

The structure met the setback and lot coverage requirements for the R-R Zone. Aerial photography from 1965 shows that Silver Hill Road was not yet constructed, and lot coverage, which included what was then the Mason Lodge, represented approximately 15 percent of the total lot area.

Sufficient evidence, including utility information, the treasurer's affidavit, church bulletins, and tax records have been presented whereby it can also be reasonably concluded that there have been no gap in operations at the church longer than 180 days.

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 Squire, seconded by Commissioner Cavitt, with Commissioners Squire, Cavitt and Vaughns voting in favor of the motion, and with Commissioners Clark and Parker absent at its regular meeting held on Thursday, February 12, 2009, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 5th day of March.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator