

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-19848-2011, Cerrito Apartments, requesting a certification of nonconforming use for a two-family dwelling unit 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 19, 2012, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, 5210 Brinkley Road, is located north of Brinkley Road approximately 127 feet east of Larwin Drive. The site is developed with a single, two-story brick two-family dwelling on .1630 acres. The building has two one-bedroom units and a basement. Access to the property is provided via ingress/egress via a shared driveway off of Brinkley Road.
- B. **History:** The subject site, 5210 Brinkley Road, is improved with a two-family dwelling with separate entrances. The building is a two-story brick home with a basement, two kitchens, and three bathrooms. The property was purchased by the applicant’s family in 1969. The property is surrounded by a 9.9-acre subdivision known as Harwood, which was developed in 1976 by the applicant’s family. The building became nonconforming in 1949 when the subject property became a part of the Maryland-Washington Regional District and was zoned Rural Residential (R-R). A Zoning Map Amendment, A- 8253C, changing the zoning of 9.9 acres of land from Rural Residential (R-R) to One-Family Detached Residential (R-55) was approved on April 8,1970, with the condition that the density be that of R-80 One-Family Detached Dwelling with and average lot size of 9,500 square feet and no frontage less than 70 feet in width. The site plan provided is in conformance with the Zoning Ordinance requirements. The applicant applied for a use and occupancy permit (Number 19848-2011).
- C. **Request:** The applicant requests certification of an existing two-unit, two-family apartment that was built in 1940 as a two family dwelling. The nonconforming status began 1949.
- D. **Surrounding Uses:** The site is surrounded by the following uses:
  - North and West—** Property zoned One-Family Detached Residential (R-55) and (R-80).
  - South—** Brinkley Road
  - East—** Property zoned One-Family Detached Residential (R-80)
- E. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate the pertinent Zoning Ordinance or have been established in accordance with all zoning 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)(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.**
  
- (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 non-operation for more than 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;**
  
    - (2) A legal description of the property; and**
    - (3) 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 documentation, the 5210 Brinkley Road two-family dwelling was constructed in 1940. When the applicant applied for a use and occupancy permit in 2011, the Planning Information Services staff could not verify that 5210 Brinkley Road was built in accordance with requirements in effect at the time of construction because original use and occupancy permit records were not available. 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. Copies of Single-Family rental licenses without lapse from December 21, 1993 to present (Exhibit 1).
2. Prince George's County Tax Assessment Records citing that the primary structure was built in 1940 (Exhibit 2).
3. Engineer Report dated July 5, 2011, citing that the two units located at 5210 Brinkley Road were built at the same time during the original construction of the structure. (Exhibit 3).
4. Rental Ledger from 1977 through September 1992, Upper Level Unit (Exhibit 4)  
Rental Ledger and lease from January 1988 to October 1989, Main Level Unit  
Rental Ledger and lease from July 2000 to April 2007, both main and upper level units  
Rental Ledger and lease from October 2008 to present, Apartment A  
Rental Ledger and lease from October 2008 to February 2009, Apartment B  
Rental Ledger and lease from February 2009 to December 2010, Apartment B
5. Letter from previous tenant Albert Ruiz dated June 25, 2011 (Exhibit 5).
6. Letter from Michael Cerrito dated June 25, 2011 (Exhibit 6).
7. Correspondence from Washington Gas dated March 20, 2011 (Exhibit 7).
8. Letter from PEPCO, dated May 7, 2011 (Exhibit 8).
9. Photos of subject property, 5210 Brinkley Road, depicting two separate electric meters (Exhibit 9).

#### DISCUSSION:

The subject property has a total of two one-bedroom dwelling units. The site was developed prior to the Zoning Ordinance requirements. The nonconforming use began in 1949 when the subject property became part of the Maryland-Washington Regional District and the property was placed in the R-R zoning category. The subject property and the surrounding 9.9 acres was re-zoned in 1970 and developed per the conditions of the Zoning Map Amendment, A- 8253C, at which time the subject property was in-use as a two family dwelling per the evidence provided.

Letters were submitted by a previous tenant Albert Ruiz (dated June 5, 2011) and by the applicant's son, Michael Cerrito (dated June 25, 2011). Mr. Ruiz was a tenant on the subject property, 5210 Brinkley Road, from 1989 to 1999. Mr. Cerrito submits that the subject property, 5210 Brinkley

Road, was purchased by his parents in 1969. Both Mr. Cerrito and his parents were aware that the house was built as a house with two separate dwelling units in it. Staff notes that under Section 27-244(b)(2)(A) of the Zoning Ordinance, any evidence such as sworn affidavits are recommended to provide additional evidence that a use meets the findings for a Nonconforming Use. The letters submitted in this case are not sworn affidavits and do not therefore carry as much weight.

The most compelling information submitted by the applicant is a letter from Mr. Richard McGill of CDT Bio-Soil systems, Inc. dated July 5, 2011. The letter refers to a site inspection conducted by a representative from CDT. The conclusion from the inspection was that the house was originally constructed as a two-unit dwelling.

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 Geraldo, seconded by Commissioner Washington, with Commissioners Geraldo, Washington, Shoaff, Bailey and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 19, 2012, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 6<sup>th</sup> day of September 2012.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator