

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-5572-2001 requesting certification of a nonconforming use 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 November 6, 2003, the Prince George's County Planning Board finds:

- A. Location and Field Inspection: The property is a rectangular-shaped parcel located on the southwest corner of College and Rhode Island Avenues in the City of College Park. The property is developed with a large two-and-a-half-story brick apartment building and an eight-car brick garage. Access to the property is provided via a driveway on Rhode Island Avenue that is connected to a small gravel parking lot.
- B. History: The subject property was developed in 1930 in the Commercial "D" Zone to be used as an eight-unit apartment building, which was a permitted use at that time. In 1949, the property was rezoned to the C-1 Zone, then on May 1, 1990, rezoned to the R-18 Zone. The subject apartment building was used as a fraternity house (without a valid permit) from the early 1980s to 1993 when the District Court determined that the use was in violation of the Zoning Ordinance.
- C. Master Plan Recommendation: The Approved Master Plan for Langley Park-College Park-Greenbelt (October 1989) recommends "Urban" density residential development (12–16.9 dwelling units per acre) for the subject property. The General Plan (October 2002) places the subject property in the Developed Tier, which seeks, among other things, to strengthen existing neighborhoods and encourage appropriate infill.
- D. Request: The applicant is requesting certification of an existing eight-unit apartment building as a nonconforming use.
- E. Surrounding Uses:
 - North– Across College Avenue is a dry cleaner in the C-1 Zone and single-family detached homes in the R-18 and R-55 Zones.
 - East– Across Rhode Island Avenue are single-family detached homes in the R-55 Zone and multifamily housing to the southeast in the R-18 Zone.
 - South– Single-family detached homes in the R-18 and R-55 Zones.
 - West– Single-family detached homes in the R-18 Zone.
- F. Certification Requirements: Certification of a nonconforming use requires that certain

findings be made. First, the use must either predate zoning 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 sets forth the specific requirements:

- 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) certifies that the use is really nonconforming and not an illegal use.**
- 2. Application for Use and Occupancy Permit:**
 - a. The applicant shall file for a use and occupancy permit.**
 - b. Along with the application and accompanying plans, the applicant shall provide the following:**
 - (1) 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.**
 - (2) 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.**
 - (3) Specific data showing:**
 - (i) The exact nature, size and location of the building, structure and use.**
 - (ii) A legal description of the property.**
 - (iii) The precise location and limits of the use on the property and within any building it occupies.**
 - (4) 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.

G. Documentary Evidence:

The applicant has submitted the following documentary evidence in support of this request for certification:

1. Affidavit dated July 6, 1981, from Florence H. Johnson in which she testifies that her father acquired the subject property in 1929 and constructed the subject apartment building. She also indicates that the building has been continuously used as an apartment building.
2. Application for Plan Examination and Permit from the Department of Licenses and Permits dated July 23, 1981, that describes the subject use as an “8-unit apartment building with 6 garages.”
3. Inspection Report from the City of College Park’s Code Enforcement Office dated June 4, 1993, recommending condemnation of the subject property.
4. Memo dated September 24, 1998, from Susan Shields, Supervisor, Permit Review Section, to Tom Matzen, Associate Director, Community Standards, that provides a detailed history of the subject property from 1929 to present.
5. List of permits (dated August 23, 2002) filed for renovation of the property.

The applicant also provides a site plan that indicates the size, location, legal description and use of the property in accordance with Section 27-244(b)(2)(C). The applicant has applied for a Use and Occupancy Permit as required.

H. CONCLUSION:

The record indicates that the subject property was developed as an eight-unit apartment building in 1929 in the Commercial “D” Zone. The use became nonconforming when it was placed in the R-18 Zone (May 1, 1990), where it remains today. Under current zoning, only four dwelling units would be permitted on the property. It is also clear from the record that the use was not continuously operated as an eight-unit apartment building. In a decision dated February 12, 1993, the District Court found that the building had been used illegally as a fraternity house from the early 1980s to 1993. Between 1993 and 1996, the ownership of the property changed several times and was in a deteriorating condition. The current owner purchased the property in 1997. The applicant also documents the numerous applications for interior and exterior renovations filed with the Department of Environmental Resources from 1998 to present.

A field inspection of the property was conducted on September 23, 2003. Staff found that the subject building has been restored to an eight-unit apartment building. The renovated units are attractive and reflect good workmanship. Clearly, the applicant has

invested a great deal of money into the restoration of this property. Additionally, although the property has not been used continuously as an eight-unit apartment building, the conditions and circumstances leading to the discontinuation were clearly beyond the control of the current owner. The period from the early 1980s to 1993, during which the property was used as a fraternity house, was prior to the applicant purchasing the site in 1997.

The Planning Board also acknowledges that the applicant and City of College Park have agreed to some additional improvements to the property. The applicant has entered into a written agreement to that effect with College Park.

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 recommends APPROVAL 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 Eley, seconded by Commissioner Harley, with Commissioners Eley, Harley, Vaughns and Hewlett voting in favor of the motion, and with Commissioner Squire absent at its regular meeting held on November 6, 2003 in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 4th day of December 2003.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator