

PGCPB No. 00-229

Permit No. CNU-7563-99-U

Prince George's County Certification of Nonconforming Use Permit No. 7563-99-U

Applicant: **Parkview Manor Limited Partnership**

Location: West side of 38th Avenue, 200 ±feet south of the intersection with Hamilton Street

Request: Certify existing apartment complex

R E S O L U T I O N

WHEREAS, on December 7, 2000, **Parkview Manor Limited Partnership** filed an application for Certification of a Nonconforming Use for an existing apartment complex in the R-18 Zone; and

WHEREAS, the advertisement of the public hearing was posted on the property in accordance with Section 27-244(f)(4) of the Prince George's County Zoning Ordinance; and

WHEREAS, the application for Certification of a Nonconforming Use, also known as Case CNU-7563-99-U, was presented to the Prince George's County Planning Board by the staff of The Maryland-National Capital Park and Planning Commission on Thursday, December 21, 2000, for its review and action in accordance with Sections 27-244(a)(1) and (f)(1)(A) of the Prince George's County Code; and

WHEREAS, the Technical Staff Report released December 13, 2000 recommends APPROVAL; and

WHEREAS, on , Thursday, December 21, 2000 having considered the recommendation in the staff report and heard testimony from the staff and applicant, the Prince George's County Planning Board agreed with the staff analysis and recommendation and adopted the same as its own.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board APPROVED Certification of Nonconforming Use Application No. CNU-7563-99-U .

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

- A. Location and Field Inspection: The subject 65,000 square foot property is a rectangular property located on the west side of 38th Avenue, 200 ±feet south of the intersection with Hamilton Street, in Hyattsville. The street address is 5030-5044 38th Avenue. The property is developed with four, three-story freestanding apartment buildings containing a total of 53 units. Theses buildings are connected by brick breeze ways, centered along the north-south axis of the property. The building=s main entrances face 38th Avenue and the front yards are improved with pedestrian oriented, landscaped courtyards. The complex=s 48 parking spaces are located behind the buildings and are accessible from a public alley located contiguous and parallel to the northern property line.

- B. History: The subject garden apartments were constructed and first occupied in 1948. When the property was re-zoned from Residential AC@ to AR-18@, on November 29, 1949, the buildings became nonconforming, due to the decreased allowable density of the R-18 zone. The buildings also exceed the current maximum percentage of two bedroom units of 50 percent, (29 of the 53 units or approximately 54.7 percent are two bedroom units).
- C. Master Plan Recommendation: The Adopted and Approved Master Plan and Sectional Map Amendment for Planning Area 68, recommends multifamily residential for the subject property (May 1994). The Plan's description of the existing multifamily development in Hyattsville's residential neighborhoods apply to the subject property. The Plan notes that the existing apartments are generally well maintained and that the complexes are located in clusters along major roadways.
- D. Request: The applicant wishes to certify the existing apartment complex as non-conforming use. The property became nonconforming on November 29, 1949 when it was re-zoned from Residential AC@ to AR-18@. The density requirement for the Residential AC@ Zone was 625 square feet gross lot area per family. The density requirement for the R-18 Zone in 1949 was 1,800 square feet of net lot area per dwelling unit. The current density requirement is 12 dwelling units per acre. The total net lot area of the property is 65,000 square feet. The density requirement for the Residential AC@ Zone permitted 53 dwelling units on the property. The current density requirements for the R-18 Zone would only allow 18 dwelling units. The buildings also exceed the current permitted maximum percentage of two bedroom units of 50 percent. There are 29, two bedroom units out of the 53 total units or approximately 54.7 percent.
- E. Surrounding Uses:
- The property is surrounded by the following uses:
- North : Immediately contiguous is a 25' wide unnamed public alley. Across the alley and fronting onto Hamilton Street is a convenience store in the C-S-C Zone.
- South : Single family residences located in the R-55/I-D-O (Intense Development Overlay) zone.
- East and West: Single family residences located in the R-55 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: Applicant has submitted the following documentary evidence in support of the nonconforming use application:
- Ex. 1. Boundary Survey, prepared September 1997, by Central Maryland Surveyors, Inc.,
Scale 1"=50'.

- Ex. 2. Deed (Liber 11786, folio 203).
- Ex. 3. SDAT Real Property Search-Individual Report showing the use=s commencement date of 1948.
- Ex. 4. Deed referencing the will of Earnest Aiken transferring property to Jesse E. Aiken.
- Ex. 5. Deed transfer from Jesse E. Aiken to himself and Benjamin Aiken for AIKEN FOUR PROPERTIES, Dec. 27, 1973.
- Ex. 6. Quit claim deed, 1992, from Roswitha S. Augustus to Joseph H. Augustus.
- Ex. 7. Apartment license applications. (1970-2000).

- H. The Planning Board further finds that the proposal to certify the existing Parkview Manor Apartments as a certified nonconforming use will not impair the integrity of the Zoning Ordinance, the 1994 Approved Master Plan and Sectional Map Amendment for Planning Area 68 or any other relevant planning documents. The Applicant has applied for a use and occupancy permit, submitted the necessary evidence showing the commencing date and continuous legal existence of the nonconforming use from the date of construction to the present. We therefore recommend APPROVAL of CNU-7563-99-U.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board=s action must be filed with the District Council of Prince George=s County within thirty (30) days following 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 Lowe, seconded by Commissioner Brown, with Commissioners Lowe, Brown, Eley and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, December 21, 2000, in Upper Marlboro, Marylandd

Adopted by the Prince George's County Planning Board this 11th day of January 2001.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:JJ:rmk