

PGCPB No. 14-28

File No. CNU-15315-13

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-15315-13, 6801 Red Top Road requesting certification of a nonconforming use for a six-unit apartment building in the R-18 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 April 3, 2014, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located in the northeastern quadrant of the intersection of Red Top Road and Fairview Avenue. The site is developed with a brick two and one-half story, six-unit apartment building with two covered porches. Five existing parking spaces are located along, and partially within, Fairview Avenue. District Council Resolution 82-1970 waived the off-street parking requirements for this property in addition to the other apartment buildings in the Hampshire View Subdivision.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	0.252	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	6	Unchanged
Site Density	23.8 units/acre	Unchanged
Lot Coverage	16.1%	Unchanged

C. **History:** The subject property was placed in the "A" Residential Zone when it was first included in the Regional District in 1928. The site was recorded as Lot 7, Block 2, of Hampshire View in November 1947. The Zoning Ordinance was amended in 1947, at which time the subject property was placed in the "C" Residential Zone. In November 1949, when the comprehensive zoning of the county took place, the property was placed in the new Multifamily Medium Density Residential (R-18) Zone. The subject apartments were constructed in 1950 in accordance with the 1949 requirements still in place. The development standards at that time permitted the allowable density based on 1,800 square feet of gross lot area per dwelling unit, which would permit six units. The complex became nonconforming on January 1, 1964 when the Zoning Ordinance was amended to require a minimum of 2,000 square feet net lot area per dwelling unit in the R-18 Zone, which would only permit five units. The applicant applied for a Use and Occupancy Permit (15315-2013) which was put on hold because no prior use and occupancy permits for the property could be found.

- D. **Master Plan Recommendation:** The 1989 and 1990 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity and Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67* (Langley Park-College Park-Greenbelt Master Plan and SMA) recommends multifamily development at an urban density. The SMA retained the property in the R-18 Zone. The 2002 *Prince George's County Approved General Plan* shows the property in the Developed Tier. The vision for the Developed Tier is for a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.
- E. **Request:** The applicant requests certification of an existing six-unit apartment building that was constructed in 1950. Because some development regulations in the R-18 Zone were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status commenced January 1, 1964 when the Zoning Ordinance was amended to increase the original minimum net lot area per dwelling unit from 1,800 square feet of gross lot area per dwelling unit to 2,000 square feet of lot area per unit.
- F. **Surrounding Uses:** The site is surrounded by similar, and in some cases, identical apartment buildings in the R-18 Zone. Many of these surrounding apartments have been certified as nonconforming uses in the past.
- 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:

Section 27-244. Certification.

(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.

(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 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—According to state assessment information, the apartments were constructed in 1950. The apartments, in their present configuration, are clearly shown in a 1957 USDA aerial photo of the site, which is the earliest photo available showing the building on the property. When the applicant applied for a use and occupancy permit in 2013, the Permit Review Section could not verify that the apartments were 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. A Maryland Department of Assessments and Taxation record indicating the structure was built in 1950. Attached is a printout showing payment of property taxes at that address covering the time period from 1998–2012.

2. Prince George's County Rental License applications from 1970–2013 which consistently show six apartments on the property. Prince George's County did not require rental licenses prior to 1970.
3. A letter dated August 30, 2013 from the Washington Suburban Sanitary Commission (WSSC) stating that the address has had an active WSSC account since June 1, 1951. The present meter was set in 1980. WSSC cannot provide usage information prior to the last meter set due to archiving limitations, but they noted that there has been no service interruption since 1980.
4. A July 2013 site plan of the subject property was submitted that contains a comparison of the regulations in effect when the apartments were built to current regulations. The site plan shows building locations, setbacks, parking, and pedestrian connections.

In addition, 18 different aerial photos of the site covering the period of time from 1957 to 2014 were reviewed. Each of these photos shows the existing building located on the site in its present configuration.

DISCUSSION

The evidence supplied supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1950. The nonconforming use began in January 1964 when the density regulations in the R-18 Zone were changed. The complex became further nonconforming when the R-18 Zone was amended in 1975 to allow a maximum of 12 units per acre. The allowable density on the subject site prior to January 1, 1964 was six units on a total of 0.252 acre. After that date, a maximum of five units would be allowed on a site that size.

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject apartments were constructed in accordance with the requirements of the Zoning Ordinance in effect prior to January 1, 1964. There is also no evidence to suggest a lapse of continuous apartment use since their construction.

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, April 3, 2014, in Upper Marlboro, Maryland.

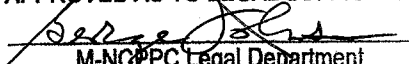
Adopted by the Prince George's County Planning Board this 24th day of April 2014.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:TL:arj

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 4/9/14