



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 11-74

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File No. CNU-20554-10

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-20554-10, Stephens Apartments requesting certification of a nonconforming use for a six-unit multifamily apartment complex 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 14, 2011, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located on the west side of Columbia Avenue, approximately 180 feet south of College Avenue. The site is developed with a single two-story, brick multifamily apartment building on 0.275 acre. The building, located at 7404 Columbia Avenue, College Park, Maryland, has six units: four one-bedroom units, two efficiencies, and a basement. Access to the development is provided via ingress/egress on Columbia Avenue.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	0.275 total	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Bedroom Percentages		
Efficiency	2 (20%)	Unchanged
1 BR	4 (80%)	Unchanged
Lot Coverage	2,000 s.f./d.u. (21.8 s.f./6 units)	Unchanged Unchanged

C. **History:** The building, known as 7404 Columbia Avenue Apartments, was legally constructed as a seven-unit apartment building in 1957. The complex became nonconforming on May 6, 1975, when the Zoning Ordinance was amended to change the maximum density in the Multifamily Medium Density Residential (R-18) Zone from 1,800 square feet of net lot area per dwelling unit per acre to the current density of 12 units per acre per County Council Bill CB-51-1975. The 7404 Columbia Avenue Apartments were constructed as a seven-unit building at a density of 6.67 dwelling units per acre. The building was purchased in 1981 by the current owner and her husband as a seven-unit multifamily apartment building. The seventh unit, a basement apartment, was flooded in 2008 as the result of a storm. The water damage was so severe that the tenants were removed and the unit was deconstructed and treated for mold. As a result, it was determined that it would be too costly to rebuild the seventh unit for rent. The building is now inspected yearly as a six-unit building. The seventh unit, previously located in the basement, has not existed or operated as an apartment unit since 2008 when it was deconstructed. Therefore, per the Zoning Ordinance, the apartment building must be evaluated as a six-unit multifamily building. The site plan includes

a table that indicates the Zoning Ordinance requirements for R-18 at the time the apartments were constructed, the current R-18 Zoning Ordinance requirements, and where the complex conforms or deviates from those requirements. The site plan provided is in conformance with the 1957 Zoning Ordinance requirements. The applicant applied for a Use and Occupancy Permit (3450-2009-00), and was denied because no prior use and occupancy permits for the property could be found.

- D. **Request:** The applicant requests certification of an existing, six-unit multifamily apartment complex that was built in 1957 as a seven-unit building, when the property was originally zoned R-18. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began May 6, 1975 when the Zoning Ordinance was amended to decrease the minimum net lot area per dwelling unit from 2,000 square feet per dwelling unit to 12 dwelling units per acre. Based on the current standard of square footage per dwelling unit, only three units are allowed in the development. The apartment complex, however, has six dwelling units (the seventh unit was removed in 2008 due to a flood), which is what was permitted according to the 1957 Zoning Ordinance R-18 regulations.
- E. **Surrounding Uses:** The site is surrounded by the following uses:
- | | |
|---------------|--|
| North— | Two properties zoned One-Family Detached Residential (R-55) improved with a single-family residence and the University of Maryland—College Park campus. |
| West— | Two properties, one zoned One-Family Detached Residential (R-55) improved with a single-family residence and the other zoned Multifamily Medium Density Residential (R-18) improved with a multifamily apartment building. |
| South— | Property zoned Multifamily Medium Density Residential (R-18) improved with a two-story apartment building. |
| East— | Columbia Avenue and fraternity and sorority houses associated with the University of Maryland. |
- F. **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 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) **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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).

(b) Application for use and occupancy permit.

- (1) The applicant shall file 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 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;**
 - (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 the applicant's documentation, 7404 Columbia Avenue Apartments was constructed in 1957. When the applicant applied for a use and occupancy permit in 2010, the Planning Information Services staff could not verify that the 7404 Columbia Avenue 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 (examples of each type of document are included as a part of this report):

1. An e-mail dated November 8, 2012 from Lee Ferguson, Assessor Manager, State Department of Assessments and Taxation for Prince George's County and a print out of the Maryland Department of Assessments and Taxation, Real Property Data Search. The e-mail states that records indicate that the building has been assessed as a multi-unit apartment building since 1975 (and since its construction in 1957) (Exhibit 1).
2. A letter dated October 14, 2010 from the Washington Suburban Sanitary Commission (WSSC) citing a continuous service connection since 1957 (Exhibit 2).
3. Rental housing license and inspections from the City of College Park (Exhibit 3).
 - (a) Rental licenses and inspections from 1969 to 2008.
 - (b) Licenses from 2009 to 2012 inspected and passed (pending this application).
4. Property deed (Exhibit 4).
5. Affidavit of Memorandum from Terrance O'Connor, CPA, and tax documents providing evidence of the property being used as a multi-unit apartment building since purchase in November 1981 (Exhibit 5).
6. A letter from Potomac Electric Power Company (PEPCO), Credit Department, indicating December 1, 1981 as the date the account was opened for 7404 Columbia Avenue, College Park, Maryland, and that the account is currently active (Exhibit 6).
7. Prince George's County Department of Environmental Resources Annual Boiler License applications from 1983 to 1994 (Exhibit 7).
8. Copies of signed leases 1989 through 2010 (Exhibit 8).
9. A letter from Jeannie Dierker, Cintas Corporation, indicating service of the property since October 1995 to present (Exhibit 9).
10. An e-mail from Charlene Stevens, IBC Sales Representative, indicating service by the Waste Management Division since October 1, 1998 (Exhibit 10).
11. Property Power of Attorney of Maurie F. Stephens and Revocable Trust documents dated June 14, 2005 (Exhibit 11).

DISCUSSION

The above evidence which consists of written communication from the County Assessor's Office citing the building assessed as an apartment building, permits from the City of College Park dating back to 1969, boiler permits from Prince George's County, written letters from local utility and other service companies, the property deed, an affidavit from the property owner's accountant, and lease agreements dating back to 1989, supports the applicant's claim that the 7404 Columbia Avenue Apartment complex has been in continuous operation since being constructed in 1957 and most importantly since the use became nonconforming in 1975. The site was developed as a seven-unit apartment building in compliance with the 1957 Zoning Ordinance requirements. The subject property, currently, has a total of six multifamily dwelling units. The seventh unit, previously located in the basement, has not existed or operated as an apartment unit since 2008 when it was deconstructed. Therefore, per the Zoning Ordinance, the apartment building must be evaluated as a six-unit multifamily building because the seventh unit has not existed for more than 180 days. The nonconforming use began in 1975 when the maximum density changed a minimum of 2,000 square feet net lot area per dwelling unit to three dwelling units per acre pursuant to County Council Bill (CB-51-1975). The allowable density on the subject site in 1957 was 6.67 (round up to 7) dwelling units per acre on a total of 0.275 acre. In 1975, the allowable density on 0.275 acre became three dwelling units. The current density, however, for the existing six-unit apartment building will be slightly less (six dwelling units per acre) on 0.275 acre, than what was constructed in 1957.

CONCLUSION

Based on the evidence submitted by the applicant (examples of each type of document are included as a part of this report), together with the lack of contradictory evidence from other sources, staff concludes that the subject property, the 7404 Columbia Avenue Apartments, was constructed in accordance with the requirements of the Zoning Ordinance in effect in 1957. There is also no evidence to suggest a lapse of continuous multifamily dwelling 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.

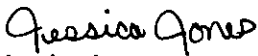
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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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 Squire, seconded by Commissioner Bailey, with Commissioners Squire, Bailey, Washington, Cavitt and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 14, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 15th day of September 2011.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY.


M-NCPPD Legal Department

Date 9/13/11