

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use CNU-24691-2016 requesting certification of a nonconforming use for a three-unit multifamily apartment building in the Multifamily Medium-Density Residential (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 January 26, 2017, the Prince George's County Planning Board finds:

A. Location and Field Inspection:

The subject property is located on the east side of Red Top Road in Takoma Park, approximately 510 feet south of the intersection of Red Top Road and East-West Highway (MD 410). The 0.1240-acre property contains a two-story brick building with three apartment units. Within the building, two of the units are two-bedroom apartments and the other is a one-bedroom apartment. The property is zoned Multifamily Medium-Density Residential (R-18). Vehicular access to the property is via Red Top Road and a rear alley. There are two off-street parking spaces behind the building accessible by the alley. On-street parking is available along Red Top Road. The property has access to multiple bus routes, which provide public transit service to residents. From the exterior inspection, the building contains new windows and new heating, ventilating, and air conditioning (HVAC) units.

B. Development Data Summary:

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	4.507	Unchanged
Use(s)	Multifamily dwelling	Unchanged
Total Units	3	Unchanged
Site Density	24.2 units/acre	Unchanged
Lot Coverage	31%	Unchanged
Bedroom Percentages		Unchanged
1 BR	1 (33.3%)	
2 BR	2 (66.7%)	

C. History: The property is improved with a three-unit apartment building that was constructed in 1951. Within the building, two of the units are two-bedroom apartments and one unit is a one bedroom apartment. The property was placed in the "A" Residential Zone when it was first included in the Regional District in 1928. The Zoning Ordinance was amended in 1947, and the

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 site was recorded in the Plat Records of Prince George’s County as Lot 4, Block 2 of Hampshire View in 1950 and was 5,400 square feet in area. The apartment building was constructed in 1951 when the development standards at that time allowed density based on 1,800 square feet of gross lot area per dwelling unit, which would have permitted three units. The complex became nonconforming on January 1, 1964 when the Zoning Ordinance was amended to require 2,000 square feet of net lot area per dwelling unit in the R-18 Zone, which would only permit two units. Bedroom percentage restrictions were not adopted until 1968, well after the apartments were constructed. The apartments are also nonconforming with regard to bedroom percentages. A use and occupancy permit was issued for the property in 1969, so it is assumed that the apartments were constructed in compliance with R-18 Zone regulations in effect at the time of construction. In 2016, the applicant applied for a U&O Permit (24691-2016-00) and was denied because the use had ceased to operate for more than 180 continuous days during renovation; therefore, a public hearing before the Prince George’s County Planning Board is required. Two spaces of off-street parking are available for the subject property, however, District Council Resolution 82-1970 waived the off-street parking requirements for this property and other properties in the Hampshire View Subdivision.

- D. **Request:** The applicant requests certification of an existing, three-unit multifamily apartment building that was built in 1951. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began on January 1, 1964, when the density changed from 1,800 square feet to 2,000 square feet per net lot area per unit. Based on the current standard of square footage per dwelling unit for the R-18 Zone, only two dwelling units are permitted. The apartment complex, however, has three dwelling units, which is what was permitted at the time of construction in 1951. Bedroom percentage restrictions were not adopted until 1968, well after the apartments were constructed. The apartments are also nonconforming with regard to bedroom percentages.
- E. **Surrounding Uses:** The site is surrounded to the north, south, east, and west by similar garden-style multifamily apartment buildings in the R-18 Zone. Of the 15 properties on the northeast side of Red Top Road containing multifamily apartment buildings, all but four properties have been issued certified nonconforming use status.
- 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 consecutive days since the use became nonconforming.

Section 27-244(a) and (b) 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.**

(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 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—Per the submitted documentation, the 3-unit multifamily apartment building was constructed in 1951. When the applicant applied for a Use and Occupancy permit, the Permit Review Section and Property Standards staff determined that the use had ceased to operate for

more than 180 consecutive days. 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 the use became nonconforming and that the break in operation of the use was beyond the applicant's control.

Section 27-244(f)

(f) Planning Board review.

(1) Required hearing.

- (A) If a copy of a valid use and occupancy permit is not submitted with the application, if the documentary evidence submitted is not satisfactory to the Planning Board's authorized representative to prove the commencing date or continuity of the use, or if a public hearing has been requested by any party of interest challenging the commencing date and/or continuity of the use, the Planning Board shall conduct a public hearing on the application for the purpose of determining whether the use should be certified as nonconforming.**

(2) Application for certification.

- (A) Whenever the Planning Board will hold a hearing on a certification of the use as nonconforming, the applicant shall complete the appropriate form provided by the Planning Board.**

(3) At least seven (7) calendar days prior to the public hearing, the Planning Board shall send written notice of the date, time, and place of the hearing to the applicant and to all persons of record.

(4) Planning Board action.

The applicant submitted the following documentary evidence in support of the application:

1. M-NCPPC PGAtlas aerial photos of the site from 1965, 1977, 1980, 1984, 1993, 1998, 2000, 2005, 2006, 2007, 2009, 2011, 2014, and 2016. Each of these photos shows the existing building located on the site in the present configuration.
2. A letter dated October 3, 2016, from the Washington Suburban Sanitary Commission (WSSC) stating that service was activated for the building on May 1, 1962. WSSC also noted water and sewer services have been in use and available to the property since June 21, 1995.

3. A copy of Use and Occupancy Permit No. 685263-U that was issued in 1969 to William Robey for apartments at 6815 Red Top Road.
4. Copies of Prince George's County Apartment and Rental Housing Licenses from the period 1970 through July 30, 2014.
5. A copy of District Council Resolution 80-1970, which waived off-street parking requirements for the subject properties and others in the vicinity.
6. A copy of a lease for unit #1 from the period August 25, 2008 through August 24, 2009.
7. A letter from a former tenant indicating they occupied unit #1 from 2011 through 2013.
8. The 2015 MRIS listing for the sale of the property showing the sale was a potential short sale.
9. First page of the contract of sale between Jaeson Abraham and Aster DeMissie Trustee dated February 24, 2015.
10. A deed recorded in the Land Records of Prince George's County at Liber 37101, Folio 56 showing the applicant purchased the property on April 24, 2015.
11. Copies of the following permits:
 - a. Electrical Permit 18693-2015-00 issued by DPIE on 5/7/15.
 - b. Mechanical Permit 22715-2015-00 issued by DPIE on 6/2/15.
 - c. Interior Work Permit 39492-2015-00 issued by DPIE on 8/31/15.
12. Copies of numerous proposals, change orders, and invoices from general, electrical, mechanical, and chimney contractors and suppliers, as well as canceled checks showing payment for services of said contractors or payment for appliances, hot water heaters, HVAC equipment, materials, etc.
13. A Plumbing Fixture Inspection form from WSSC dated October 22, 2015, showing the installation of 18 replacement fixtures for water closets, lavatories, kitchen sinks, residential dishwashers, gas fixtures, and gas cooking equipment fixtures, and an executed WSSC Small Diameter Service Connection Acceptance Affidavit executed by Aster DeMissie, dated October 22, 2015.
14. Copy of a letter from the law office of Weinstock, Friedman & Friedman, P.A. dated December 1, 2015 to Sean Hicks and Keith Hopkins demanding completion of mechanical work.

15. Copy of Complaint filed by Aster DeMissie with the State of Maryland Department of Labor, Licensing, and Regulation (DLLR) on November 12, 2015 against, Keith Hopkins, Mechanical Contractor, as well as a response from DLLR on Complaint #HVAC160085 dated March 2, 2016.
16. Copy of Invoice from H.M. Sweeny Co. and Service Order from Smith & Walker from March 2016 showing the purchase and installation of mechanical equipment.
17. Copy of a DPIE Correction Order for Permit #39492-2015-01 dated March 17, 2016.
18. A site plan of the subject property that contains a comparison of the regulations in effect when the apartments were built and to the current regulations. The site plan shows building locations, setbacks, parking, and pedestrian connections.

G. Discussion:

The apartment building was constructed in 1951, however, the development exceeds the current allowable density in the R-18 Zone and does not meet the current requirements for bedroom percentages. The use became nonconforming on January 1, 1964, when the density changed from 1,800 square feet to 2,000 square feet of net lot area per unit. The apartment building does not meet bedroom percentage requirements, which changed in 1968. A Use and Occupancy Permit (No. 685263-U) was issued in 1969 to William Robey for apartments at 6815 Red Top Road, so it is assumed that the apartments were constructed in compliance with the R-18 Zone regulations in effect at the time of construction. Two spaces of off-street parking are available for the subject property, however, District Council Resolution 82-1970 waived the off-street parking requirements for this property and other properties in the Hampshire View Subdivision. When the applicant applied for a use and occupancy permit in May 2016, the Permit Review Section could not verify that the nonconforming use had not ceased to operate for more than 180 consecutive days between the time the use became nonconforming and the date when the application was filed.

The applicant purchased the property in April 2015. The building contained three apartments but according to the Statement of Justification was a damaged foreclosure property. The units were uninhabitable and needed significant renovation. In May 2015, the applicant sought permits and hired contractors (see proposals, change orders, receipts, and proof of payment); and construction/renovation started shortly thereafter. Per the Statement of Justification, during construction, the applicant's father passed away and the applicant had to attend to family responsibilities. During the time the applicant was away, the electrician and HVAC contractors took payments without finishing their contracted work. In November 2015, the applicant filed a formal complaint with the Maryland Department of Labor, Licensing, and Regulation (DLLR) against the HVAC contractor. In December 2015, the applicant hired an attorney to help seek completion of the HVAC work. The applicant received an acknowledgement of the formal complaint to DLLR on March 2, 2016. Due to nonperformance by the HVAC contractor originally hired, the applicant had to purchase additional HVAC equipment and hire a new contractor to complete the installation (see H.M. Sweeny Co. invoice and Smith & Walker Service Order from

March 2016). Final renovation was completed on the unit in May 2016. The applicant applied for a U&O Permit from DPIE and was denied because the property does not conform to present Zoning Regulations.

A copy of Use and Occupancy Permit No. 685263-U that was issued in 1969 to William Robey for apartments at 6815 Red Top Road was submitted, so it is assumed that the apartments were constructed in compliance with the R-18 Zone regulations in effect at the time of construction.

Of the 15 properties on the northeast side of Red Top Road containing multifamily apartment buildings, all but four properties have been issued certified nonconforming use status.

The evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1951 through July 30, 2014. The evidence consists of the Prince George's County Rental Housing Licenses from 1970 through July 30, 2014; a letter from Washington Suburban Sanitation Commission (WSSC) citing the meter installation date and a continuous service statement; PGAtlas aerial photos of the subject property from 1965 through 2016; and a copy of Use and Occupancy Permit No. 685263-U that was issued in 1969 to William Robey for apartments at 6815 Red Top Road.

Consistent with Section 27-244(b)(2)(B) of the County Code, any break in the continuous use of the building between August 1, 2014 and April 24, 2015 was out of the control of the applicant, who did not own the property during that time period. Evidence consists of the deed of sale for the property between Jaeson Abraham and the Aster DeMissie Revocable Trust dated April 24, 2015.

Consistent with Section 27-244(b)(2)(B) of the County Code, any break in continuous use of the building between April 25, 2015 and the present time was to bring the building into Code compliance or to pursue the certificate of nonconforming use. Extensive renovation of the property by the applicant and the applicant seeking this certification of nonconforming use have been ongoing since April 2015. The evidence includes proposals, change orders, receipts, and proof of payment for extensive renovation of the property from May 2015 through spring 2016; correspondence by an attorney to the mechanical contractor in December 2015 regarding the scope of services and timing for completion; and a copy of a formal complaint filed by the applicant to MD DLLR in November 2015.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, staff concludes that the building on the subject property was built in accordance with the requirements of the R-18 Zone when constructed. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use between January 1, 1964 and July 30, 2014; any lapse of use between August 1, 2014 and April 24, 2015 was not under the control of the applicant; and any lapse of use between April 25, 2015 and the present time has been due to extensive renovation of the property to bring the property into code compliance.

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, Doerner, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, January 26, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 16th day of February, 2017.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

PCB:JJ:CP:wrc