

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-30022-13-01, 6809 Red Top Road, requesting certification of a nonconforming use for an existing six-unit apartment building 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 October 9, 2014, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, 6809 Red Top Road, is located 300 feet from the intersection of Red Top Road and Fairview Avenue. The site is developed with a two-story, brick, garden-style, six-unit apartment building on a cul-de-sac. Access to the property is off of Red Top Road. Off-street parking is available for the subject property. 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, because a portion of the parking spaces extend beyond the property onto Red Top Road.

- B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	0.25	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	6	Unchanged
Site Density	24 units/acre	Unchanged
Lot Coverage	11.8%	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 12, 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 (30022-2013-01) because no prior use and occupancy (U&O) permits for the property could be located.

- D. **Master Plan Recommendation:** The 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity* and 1990 *Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67* recommends multifamily development at an urban density. The SMA retained the property in the R-18 Zone. The vision for this area in the *Plan Prince George's 2035 Approved General Plan* is for a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.
- E. **Surrounding Uses:** The site is surrounded by similar garden-style apartment buildings in the R-18 Zone. The site is surrounded by the following uses:
- North and East—** Developed property with single-family dwellings zoned One-Family Detached Residential (R-55).
- South and West—** Developed property with multifamily apartment buildings zoned Multifamily Medium Density Residential (R-18).
- F. **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.
- 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—Per the state assessment database, the apartments were constructed in 1950. When the applicant applied for a U&O 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 U&O 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 letter dated April 16, 2014 from the Washington Suburban Sanitary Commission (WSSC) stating that the address has had an active WSSC account since January 1, 1951. The present meter was installed on February 5, 2002; two previous meters were installed

on May 17, 1989 and April 11, 1989. WSSC noted that there has been no service interruption since 1999.

2. Prince George's County Multifamily Rental Licenses for 6809 Red Top Road for the years 1970 through 2015 which consistently show six apartments on the property. Prince George's County did not require rental licenses prior to 1970.
3. Affidavit of Michael E. Trageser citing property management between 1999 and 2001 and property ownership from 2009 to 2013.
4. Affidavit of Ronald L. Lenkin indicating knowledge of the subject property while managing other Red Top Road properties.
5. M-NCPPC PGAtlas aerial photos of the site covering the period of time from 1965, 1977, 1984, 1988, 1993, 1998, 2007, and 2009. Each of these photos shows the existing building located on the site in its present configuration.
6. A Maryland Department of Assessments and Taxation record indicating the structure was built in 1950.
7. A July 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.

DISCUSSION

The above evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1950. The letter from WSSC indicates that a service account serving the property was activated on January 1, 1951. There is no indication of service interruption to the property. Additional evidence, which consists of apartment license applications, aerial photographs, and affidavits from Michael E. Trageser and Ronald L. Lenkin demonstrate that the property has continuously operated since 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 0.25 acre. The current maximum density only allows three units.

CONCLUSION

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 Geraldo, seconded by Commissioner Bailey, with Commissioners Geraldo, Bailey, Shoaff and Hewlett voting in favor of the motion, and with Commissioner Washington absent at its regular meeting held on Thursday, October 09, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of October 2014.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY.


M-NCPPC Legal Department

Date 10/31/14