

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-8825-2015 requesting certification of a nonconforming use for a four-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 September 22, 2016, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property is located northwest of Parkwood Street approximately 100 feet southwest of 38th Avenue. The site is developed with a two-story brick and stone apartment building with basement on a 7,278-square-foot lot. The subject apartment building has four unmarked gravel parking lots in the rear of the site which is accessed by a 15-foot-wide private alley to the northwest. Some street parking is also available on Parkwood Street located in front of the subject site. The site has an existing concrete patio in the backyard of the apartment with concrete walkway that leads to an existing parking lot. The site has frontage on Parkwood Street and a 15-foot-wide private alley to the northwest. Access to the site is via a four-foot-wide long concrete walkway from Parkwood Street.

- B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	0.1670	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	4	Unchanged
Site Density	23.95 units/acre	Unchanged
Lot Coverage	16.1%	Unchanged

- C. **History:** The site was recorded as Lot 41, Block 3, of Cottage City in April 1936. The subject apartment building was constructed in 1936. At the time of the building construction, the property was zoned Residential "C" and was in conformance with the regulations in effect. The development standards at that time permitted the allowable density based on a 625-square-foot lot area per dwelling unit for a four-unit apartment building. The use became nonconforming in November 29, 1949, when the property was placed in the Multifamily Medium Density Residential (R-18) Zone. Since then, the density changed from a minimum 625-square-foot lot area per dwelling unit to a minimum of 1,800-square-foot net lot area per dwelling unit thus allowing three dwelling units. The site plan includes a table that indicates the Zoning Ordinance requirements of the "Residence C" Zone classification which were in place at the time the apartment building was constructed, current R-18 Zoning Ordinance requirements, and where the

use conforms to or deviates from those requirements. The use does not meet the current R-18 Zone density requirements. The applicant applied for a Use and Occupancy Permit (8825-2015-U) which was placed on hold because there is no prior use and occupancy permit; therefore, certification of nonconforming use must be approved by the Prince Georges County Planning Board.

- D. **Master Plan Recommendation:** The 1994 *Approved Master Plan and Sectional Map Amendment for Planning Area 68* retained the subject property in the R-18 (Multifamily Medium Density Residential) Zone.
- E. **Request:** The applicant requests certification of a nonconforming use for a four-unit apartment building in the R-18 Zone. At that time, the existing property was subject to the requirements of the Residential “C” Zone classification.

Because development regulations were changed or adopted after the use was lawfully established, the apartment use became nonconforming. Based on the current standard of square footage per dwelling unit for the R-18 Zone, the existing subject use exceeds the current maximum density; as a result, a request for certification of nonconforming use approval is required.

- F. **Surrounding Uses:** The site is primarily surrounded by single-family residential development in to the north, to the south across Parkwood Street, and to the west side of the property in the R-55 Zone. The east side of the property is developed with multifamily apartment building in the R-18 Zone.
- 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 applicant's documentation, this apartment building was constructed in 1936. This apartment, in its present configuration, is shown in a 1938 aerial photo of the site, which the earliest photo available is showing the building on the property. When the applicant applied for a use and occupancy permit on March 11, 2015, it was determined that certification of nonconforming use is required because the apartment exceeds the current maximum density. The Maryland-National Capital Park and Planning Commission (M-NCPPC) 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 notarized letter from Mr. Angelino Azurin Jr (owner) dated August 22, 2016 stating that she has owned the subject apartment building since January 2007 as a four units apartments. It has never ceased operation as a multifamily dwelling for more than 180 calendar days.
2. A notarized letter dated August 3, 2015, from Mr. George Anderson, a 93 years old long time neighbor of Mr. Angelino Azurin and Aurora Azurin (owners), lives in 3716 38th Avenue, attesting that the subject four-unit multifamily one-bedroom apartment building was constructed in 1936. Mr. Anderson also states that he has been living in the neighborhood since the first brick was laid on it. He further states that apartments never ceased operation as multi-family dwelling for more than 180 consecutive calendar days since it was built.
3. A Maryland Department of Assessments and Taxation record indicating the structure was built in 1936. Attached is a printout showing payment of property taxes at that address covering the time period from 2011–2015.
4. Copies of Prince George’s County Rental Licenses from February 2000–December 2016 which consistently show four apartment units on the property. In addition, copies of Rental License application was also submitted from May 1982 to October 2008. According to an e-mail dated June 20, and 21, 2016, from Mr. Donald Green, Inspector’s Supervisor of Prince Georges County Department of Permitting, Inspections and Enforcement (DPIE) Division, confirmed that the property has been continuously licensed since April of 1984 and had determined to be uninterruptedly used as a legal multi family dwelling.

This information is based on the original license applications and copies of licenses on file. No other license could be located for this property beyond that because some information may have been misplaced over the years.

5. A letter dated August 14, 2015 from the Washington Suburban Sanitary Commission (WSSC) stating that the computerized record shows that the water and sewer services have been in use and available to this property since at least September 1972. Due to archiving limitations, billing information prior to that date is not available, but they noted that there has been no service interruption for more than 180 days.
6. August 22, 2016, a 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, and pedestrian connections.

In addition, the Planning Board has reviewed different aerial photos of the site covering the period of time from 1938 to 2014. Each of these photos shows the location of the existing building on the site in its present configuration. However, from a 2014 aerial photo, it appears that the applicant had added a concrete patio in the back of the house that does not require a building permit. This patio is within the limit of 70 percent maximum green area calculation as required by the Zoning Ordinance.

DISCUSSION

In the Planning Board's opinion, the above evidence supports the applicant's claim that the subject multifamily dwelling has been in continuous operation since its construction in 1936. The nonconforming use began in November 1949 when the density regulations in the Residential "C" changed from a minimum 625-square-foot lot area per dwelling unit to a minimum of 1,800-square-foot lot area per dwelling unit in the current R-18 Zone. The allowable density on the subject site prior to November 29, 1949 was four units on a total a 0.167 acre. After that date, a maximum of three units would be allowed on a site at that size.

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 apartment building was constructed in accordance with the requirements of the Zoning Ordinance in effect prior to November 29, 1949. 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, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, September 22 2016, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 13th day of October, 2016.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

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