

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed NCU-17553-2002-U requesting certification of a nonconforming use 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 9, 2003, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property is an irregularly shaped parcel located on the northeast corner of the intersection of Natoli Place (New York Place) and Queensbury Road. This property is developed with a two-and-a-half-story brick apartment building. A split-rail fence encloses the subject property. All parking for the subject use is on the street.

The property is surrounded by the following uses:

North— A multifamily dwelling in the R-18 Zone and single-family detached homes in the R-55 Zone. Farther north is MD 410 (East West Highway).

East— A single-family detached dwelling in the R-55 Zone, a small apartment building in the R-18 Zone, and a Volunteer Fire Department station in the R-55 Zone.

South— Across Queensbury Road are single-family detached homes to the southeast in the R-55 Zone and a credit union to the southwest at Lafayette Avenue in the C-O Zone.

West— A public parking lot in the R-55 Zone and the B&O Railroad tracks.

- B. **History:** In 1941 the subject property was in the Residential "C" Zone when the subject apartment building was built. On November 29, 1949, the property was placed in the R-18 Zone. This property remains in the R-18 Zone.
- C. **Master Plan Recommendation:** The Approved Master Plan for Planning Area 68 recommends medium-density, multifamily development for the subject property.
- D. **Request:** The applicant proposes to certify his eight-unit apartment building as a nonconforming use. The subject building was constructed in 1941 as an eight-unit, multifamily dwelling on a 10,000-square-foot lot in the Residential "C" Zone. The Residential "C" Zone required a minimum gross lot area of 625 square feet per dwelling unit. Based on the lot size of 10,000 square feet, eight dwelling units were permitted. The property was rezoned on November 29, 1949, from the Residential "C" to the R-18 Zone, which required a minimum net lot area of 1,800 square feet per dwelling unit. A maximum

of five dwelling units would have been allowed for the subject property. The rezoning of the property made the eight-unit apartment building a nonconforming use. The current maximum density for the R-18 Zone is 12 units per acre, or 3,630 square feet per dwelling unit, which only permits two dwelling units on the subject property.

- E. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning 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 sets forth the specific requirements:

1. **In general, 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) certifies that the use is really nonconforming and not an illegal use.**
2. **Application for Use and Occupancy Permit:**
 - a. **The applicant shall file for a use and occupancy permit.**
 - b. **Along with the application and accompanying plans, the applicant shall provide the following:**
 - (1) **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.**
 - (2) **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.**
 - (3) **Specific data showing:**
 - (i) **The exact nature, size and location of the building, structure and use.**
 - (ii) **A legal description of the property.**
 - (iii) **The precise location and limits of the use on the**

property and within any building it occupies.

- (4) 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.**

F. Documentary Evidence:

The applicant has submitted the following documentary evidence in support of this request for certification:

1. Apartment license applications from the Department of Environmental Resources from 1970 to 2001.
2. Affidavit dated 9-9-02 from David Simard, former owner of the subject use, who submits that the use was operated as an eight-unit apartment building while under his ownership and 30 years prior. No dates of his ownership are provided.
3. Affidavit dated 9-11-02 from Rosella Wright, who moved next door to the property in 1955, and testifies that the use has always been an eight-unit apartment building.
4. Affidavit dated 7-24-02 from Elizabeth Figard, who lived on the top floor of the subject building from 1948 to 1953.
5. Business license from the Town of Riverdale Park issued to the applicant on July 9, 2002, for the operation of the subject apartment building.
6. A real property data search from the Maryland Department of Assessments and Taxation that the primary structure was built in 1941.

The applicant has also submitted a survey of the property as required. The survey, however, does not provide up-to-date street names. The property is shown as being on the corner of Oliver St. and Natoli Place. The correct location is the corner of Queensbury Road and Natoli Place. The applicant must revise the survey to show the correct street name. The applicant does not provide a valid use and occupancy permit issued prior to the date the use became nonconforming.

- G. CONCLUSION: The applicant has submitted documentation supporting his contention that the use predates the date when it was rezoned from Residential “C” to the R-18 Zone. Further, the combination of tax assessment information, apartment licenses, and sworn testimony from neighbors establishes that the use has been in continuous operation since the rezoning. The survey submitted by the applicant must, however, be revised to show the adjoining street names as Queensbury Road and Natoli Place.

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 recommends APPROVAL the above-noted application, subject to the condition that the survey be revised to show the adjoining street names as Queensbury Road and Natoli Place.

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.

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 Scott, seconded by Commissioner Eley, with Commissioners Scott, Eley, Lowe and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, January 9, 2003 in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of January 2003.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

TMJ:FJG:JJ:rmk

(Revised 8/9/01)