

PGCPB No. 00-237

Permit No. CNU-8323804-2000-U
VCNU-8323804-2000-U

Prince George's County Certification of Nonconforming Use Permit No. CNU-8323804-2000-U

Applicant: **Nalbel Ltd. Partnership**

Location: **Southeast corner of Capital View Drive and Nalley Road.**

Request: **Certification of 287 multifamily dwelling units** and variance from green area requirement.

R E S O L U T I O N

WHEREAS, on September **28, 2000** , **Nalbel Ltd. Partnership** filed an application for Certification of a Nonconforming Use for an existing multifamily development in the R-18 Zone and a variance from green area requirements; and

WHEREAS, the advertisement of the public hearing was posted on the property in accordance with Section 27-244(f)(4) of the Prince George's County Zoning Ordinance; and

WHEREAS, the application for Certification of a Nonconforming Use, also known as Case CNU-8323804-2000-U and VCNU-8323804-2000-U , was presented to the Prince George's County Planning Board by the staff of The Maryland-National Capital Park and Planning Commission on Thursday, December 21, 2000, for its review and action in accordance with Sections 27-244(a)(1), (f)(1)(A) and 27-239.04 of the Prince George's County Code; and

WHEREAS, the Technical Staff Report released December 6, 2000 recommends APPROVAL; and

WHEREAS, on December 21, 2000, having considered the recommendation in the staff report and heard testimony from the staff and applicant, the Prince George's County Planning Board agreed with the staff analysis and recommendation and adopted the same as its own.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Subtitle 27, Prince George's County Code, the Prince George's County Planning Board recommends APPROVAL of Nonconforming Use No.CNU-8323804-2000-U and Variance Application No. VCNU-8323804-2000-U.

BE IT FURTHER RESOLVED, that the findings and reasons for the decision of the Prince George's County Planning Board are as follows:

- A. Location and Field Inspection: The subject property is located on the southeast corner of Capital View Drive and Nalley Road, between Capital View Drive and Hill Oaks Road. The property is developed with a 287 unit apartment complex known as the Washington Heights Apartments. This development consists of eight, three-story brick structures and a large paved parking lot. A playground and basketball court are also provided on this property.
- B. History: The apartments were constructed in 1968 pursuant to special exception

application SE-1862.

- C. Master Plan Recommendation: The 1993 Master Plan for Landover and Vicinity recommends urban density residential development (12.0 - 16.9 dwelling units per acre).
- D. Request: The subject use became nonconforming on May 6, 1975 pursuant to Council Bill CB-51-1975 which changed the density requirements from 2,000 square feet per acre to 12 units per acre. Use and Occupancy permits were last issued for this use in 1970. The applicant now wishes to validate the existing development which is now a nonconforming use.

The applicant is making improvements to the property which necessitate a reduction in green area. Section 27-442(c) Table II sets forth a minimum green area requirement of 60 percent of the net lot area. The applicant wishes to provide 50 percent green area and therefore requests that a variance be granted.

- E. Surrounding Uses:

North - Townhouses in the R-T and R-18 Zones

East - Parking for FedEx Field to the east and northeast in the R-M Zone. Farther east is FedEx Field in the R-M and L-A-C Zones.

South - Across Hill Oaks Road are townhouses in the R-T Zone and parking for FedEx Field to the southeast in the R-M Zone.

West - Undeveloped land in the R-55 Zone.

- F. 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.**

G. Documentary Evidence:

The applicant has submitted copies of HUD Housing Assistance contracts from 1968 to present, Partnership Operation Statements and Income Tax returns as evidence of continuous operation of the subject use. It is clear from these documents that this nonconforming use has not ceased to operate for more than 180 consecutive calendar days between the time the use became nonconforming (May 6, 1975).

H. Variance:

Background

The subject property previously existed as a 287 unit multifamily housing for low-income families under a rent supplemented program administered by the U.S. Department of Housing and Urban

Development. The owner is currently doing an \$11,000,000 renovation that will change this development to a market rate community. The Planning Board also notes that the District Council enacted legislation (CB 95-2000), which allowed for a change to the parking lot and access, provided there was a minimum 30% reduction in the number of existing bedrooms during the renovation. Existing bedrooms are being reduced by nearly 40%. The purpose of this legislation, as described in the summary section of CB-95-2000, is to Afacilitate the process for redevelopment of the Washington Heights Apartments@.

The conversion to a market rate project necessitates additional parking on the site and thus parking is being increased from 360 to 501 parking spaces. This increase in parking makes it impossible to maintain the existing percentage of required green area (60%). Green area coverage, post development will be approximately 50%. At the time of the original development and construction, it was satisfactory to provide parking at a rate of approximately one space per dwelling unit. Such a parking ratio, though allowable pursuant to the nonconforming status, is not competitive for a multifamily development in the open market.

Section 27-230 provides that the Planning Board may grant a variance when the Board finds that:

(1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;

Finding: The shape of the property is a major constraint to compliance with the green area requirement. The parcel is triangular shaped and contains existing buildings which limit options for redesign in this redevelopment process. The redevelopment cannot occur without the increase in parking and the areas in which parking can be provided in appropriate proximity of the dwelling units is constrained by an inability to move existing buildings. An additional access point is being provided to make some of the newly proposed parking functional.

(2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and

Finding: The strict application of the green area requirement will result in peculiar and unusual practical difficulties to and exceptional or undue hardship upon, the owner of the property. Providing this additional parking is essential to converting the development and enhancing its appearance in the community. The property is too remote from the existing Metro and lacks direct public transportation to various employee centers. An analysis of the expected market indicates the renovated facility will be attractive to couples, single individuals, and small families. Sufficient parking is no longer considered an amenity in choosing where to rent an apartment, but rather a standard that must be existent in order for a multifamily community to be deemed competitive. Thus providing less parking, by

maintaining the existing percentage of green area, would result in an unusual practical difficulty for the Applicant. Removing any of the existing buildings in order to provide the parking while maintaining the existing percentage of green area would amount to an exceptional or undue hardship. The number of dwelling units as well as the number of bedrooms on the property is being significantly reduced and a further reduction would negatively impact the proposed redevelopment.

(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

Finding: The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan. The 1993 Master Plan for Landover and Vicinity recommends urban density residential development (12.0 - 16.9 dwelling units per acre). The visual impact of less green area is being balanced with a renovation of the site and a reduction on the population on the property. A purpose of providing green area at a location is for the enjoyment of residents. In this instance, the population of the site subsequent to the renovation is projected to be reduced approximately 48 percent. The requested variance to reduce green area from 60 percent of the site to 50 percent amounts to a 10 percent reduction. On a 13.24 acre site such a reduction is not significant.

I. Additional Finding:

The applicant has provided the documentary evidence necessary to grant the certification of a nonconforming use. The Board notes that this proposal, which includes a variance to reduce green area on the site, is part of a redevelopment effort that will provide better quality multifamily development. We believe a 10 percent reduction in the green area is a small concession given the proposal to upgrade and beautify this property. The findings for both the nonconforming use and variance have been met. The Planning Board therefore, recommends APPROVAL of Nonconforming Use Application No. CNU-8323804-2000-U and Variance Application No. VCNU-8323804-2000-U.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board=s action must be filed with the District Council of Prince George=s County within thirty (30) days following 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 Eley, seconded by Commissioner Brown, with Commissioners Eley, Brown, Lowe and Hewlett voting in favor of the motion, at its regular meeting held on Thursday, December 21, 2000 in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 11th day of January 2001.

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Executive Director

By Frances J. Guertin
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