



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

## Certification of Nonconforming Use

**CNU-8303-06**

Application	General Data
<b>Project Name:</b> Towne Centre Apartments  <b>Location:</b> Located on the north side of Contee Road, approximately 700+ feet west of the intersection of MD 197 and Contee Road  <b>Applicant/Address:</b> Towne Centre Associates, LLC. 8120 Woodmont Avenue, Suite 900 Bethesda, MD 20814-2743	Date Accepted: 2/20/2007
	Planning Board Action Limit: N/A
	Plan Acreage: 25.8081
	Zone: R-18
	Dwelling Units: 562
	Square Footage: 221,668
	Planning Area: 62
	Tier: Developing
	Council District: 01
	Municipality: N/A
	200-Scale Base Map: 217NE08

Purpose of Application	Notice Dates
Certification of Nonconforming Use for 562 Apartments Units	Adjoining Property Owners Previous Parties of Record Registered Associations: 11/21/2006 (CB-12-2003)
	Sign(s) Posted on Site and Notice of Hearing Mailed: 5/07/2007

Staff Recommendation		Staff Reviewer: Cynthia Fenton	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

May 14, 2007

**TECHNICAL STAFF REPORT:**

TO: The Prince Georges County Planning Board

VIA: Jimi Jones, Zoning Supervisor

FROM: Cynthia Fenton, Planning Coordinator

SUBJECT: **Certified Nonconforming Use Application (CNU No. 8303-2006)**

REQUEST: **Certification of Nonconforming Use for 562 Multifamily Apartment Units**

RECOMMENDATION: **APPROVAL**

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NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated at the top of the cover sheet. The Planning Board also encourages all interested persons to request to become a person of record in this application. Requests to become a person of record should be made in writing and addressed to the Development Review Division at the address indicated above. Please call 301-952-3530 for additional information.

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## FINDINGS:

- A. **Location and Field Inspection:** The subject property has 137 feet of frontage along the north side of Contee Road, between Briarwood Road and Laurel-Bowie Road (MD 197). The site is developed with the three-story Town Centre Apartment complex. The subject property contains 220 multifamily units on 10.10 acres in Section 3, and 342 units on 15.70 acres in Section 4 for a total of 562 units. These two sections are located directly north of the Laurel Square Apartments (Sections 1 and 2) which front on Contee Road. All four sections were developed as the Town Center Development Subdivision, Parcel B, on a total of 53.5 acres. Access to Sections 3 and 4 is provided from a shared ingress/egress easement (Arden Way) in Section 1.

## B. Development Data Summary

	EXISTING	PROPOSED
Zone	R-18	Unchanged
Acreage	25.80 total	Unchanged
Section 3	10.10	Unchanged
Section 4	15.70	Unchanged
Use(s)	3-story apartments	Unchanged
Section 3	220 dwellings	Unchanged
Section 4	342 dwellings	Unchanged
Site Density	21.78	Unchanged
Section 3	21.77	Unchanged
Section 4	21.78	Unchanged
Bedroom Percentages		
1BR	140 (25%)	Unchanged
2 BR	393 (70%)	Unchanged
3 BR	29 (5%)	Unchanged
Total Units	562	Unchanged
Lot Coverage		
Section 3	44.73%	Unchanged
Section 4	39.64%	Unchanged

- C. **History:** The Town Center Apartments were constructed between 1969 and 1970. The complex became nonconforming in 1975 when the Zoning Ordinance was amended to decrease the maximum density in the R-18 Zone from 2,000 square feet per dwelling unit to a maximum of 12 units per acre (CB-51-1975). The Town Centre Apartments are constructed at a density of 21.78 dwelling units per acre. Two special exceptions were approved (SE-1893 and SE-2274) to allow greater percentages of units with two or more bedrooms than allowed in the R-18 Zone. The site plan indicates the Zoning Ordinance requirements at the time the apartments were constructed, the current requirements, and where the complex conforms or deviates from those requirements.

Bedroom percentages approved by the special exceptions and those actually constructed are also provided. The site plan is in conformance with 1970 Zoning Ordinance requirements and the approved special exceptions for bedroom percentages. The applicant applied for a use and occupancy permit (Number 8303-2006-00) on March 7, 2006, and was denied because no prior use and occupancy permits for the property could be found.

- D. **Master Plan Recommendation:** The March 1990 *Approved Master Plan for Subregion I* recommends multifamily development at a “high urban” density. The October 1990 Sectional Map Amendment retained the property in the R-18 Zone. The 2002 *General Plan* shows the property in the Developing Tier. The vision for the Developing Tier is to maintain a pattern of low-to moderate-density suburban residential communities, distinct commercial centers, and employment areas that are increasingly transit serviceable.
- E. **Request:** The applicant requests certification of an existing, 562-unit apartment complex that was built between 1969 and 1970 pursuant to two approved special exceptions. 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 began May 6, 1975 when the Zoning Ordinance was amended to decrease the minimum net lot area per dwelling unit from 2,000 square feet per dwelling unit to 12 dwelling units per acre. Based on the current standard of square footage per dwelling unit, only 121 units are allowed in Section 3. Section 3 of the apartment complex, however, has 220 dwelling units. Section 4 has 342 units; only 188 are permitted according to R-18 regulations.
- F. **Surrounding Uses:**  
The site is surrounded by the following uses:
- North:** Single-family homes along Briarcroft Lane, zoned R-R
- East:** Town Center Shopping Center, Parcels “A” and “B-2”, zoned C-S-C
- South:** Laurel Square Apartments (Sections 1 & 2), zoned R-18
- West:** Single-family homes along Briarwood Drive, zoned R-R
- 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** sets forth the following specific requirements for certifying a nonconforming use:
- (a)(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) or the District Council certifies that the use is nonconforming and not illegal.**
- (b)(1) **The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**

**(b)(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;**
  - (2) A legal description of the property; and**
  - (3) 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 the applicant, the apartments were constructed between 1969 and 1970. When the applicant applied for a use and occupancy permit in March, 2006, the Planning Information Services staff 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), 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 December 30, 2005, from the Washington Suburban Sanitary Commission (WSSC) indicating that the subject property has been serviced with water and sewer continuously since at least January 1, 1970 with no break in service longer than 180 days (Exhibit 1).
2. An affidavit dated May 22, 2006 indicating a current Town Centre Apartment resident has lived at her current address (in Section 3) since July 1, 1970 (Exhibit 2).
3. Prince George's County rental license applications from 1971 to 2004 (for buildings in Section 4 only).
4. BGE utility bills from August-October 2006.

5. A February 9, 2006 site plan of the subject property was submitted that contains a comparison of the existing apartment complex to the R-18 Zone regulations in effect when the apartments were built and with 2006 regulations. The tables also indicate the allowable bedroom percentage requirements per the approval of the special exceptions. The site plan shows building locations, setbacks, parking and pedestrian connections.

#### **DISCUSSION:**

In staff's opinion, the above evidence supports the applicant's claim that the apartment complex has been in continuous operation since constructed between 1969 and 1970. The nonconforming use began in 1975 when the maximum density changed from one dwelling unit for every 2,000 square feet to 12 dwelling units per acre (CB-51-1975). The allowable density on the subject site in 1969—1970 was 21.78 dwelling units per acre on a total of 25.80 acres. In 1975 the allowable density on 25.80 acres became 310 dwelling units. The subject site has a total of 562 dwelling units. Bedroom unit percentages were adopted on October 1, 1968. Two special exceptions were required to allow the development to exceed the allowable percentage (not more than 10 percent of the units can have three or more bedrooms, and not more than 40 percent can be two-bedroom units). The site was developed in compliance with the two special exceptions.

#### **CONCLUSION:**

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, staff concludes that the subject apartments were constructed in accordance with special exceptions SE-1893 and SE-2274 and the requirements of the Zoning Ordinance in effect between 1969 and 1970. There is also no evidence to suggest a lapse of continuous apartment use since their construction. Therefore, it is recommended that CNU-8303-2006 be APPROVED as a certified nonconforming use.