



## CERTIFICATION OF NONCONFORMING USE 3632-2002-U

Application	General Data
<b>Project Name:</b> Cherry Branch Apartments  <b>Location:</b> Northeast corner of Cherry Lane and the B&O Railroad Line  <b>Applicant/Address:</b> Richard G. Corey, Managing Partner c/o Zephyr Management 320 Park Avenue New York, New York 10022  <b>Correspondent</b> Garland H. Stillwell, Esquire Linows and Blocher LLP, Suite 1000 1010 Wayne Avenue, Silver Spring, MD 20910	Date Accepted 3-6-02
	Planning Board Action Limit N/A
	Tax Map & Grid 006 D-4
	Plan Acreage 12.3
	Zone R-18
	Dwelling Units 172
	Square Footage
	Planning Area 62
	Council District 01
	Municipality N/A
	200-Scale Base Map 219NE8

Purpose of Application	Notice Dates
Certification of 172 Nonconforming Apartments	Adjoining Property Owners (CB-15-1998) N/A
	Previous Parties of Record (CB-13-1997) N/A
	Sign(s) Posted on Site 4-19-02
	Variance(s): Adjoining Property Owners N/A

Staff Recommendation			Staff Reviewer: Elsabett Tesfaye
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			



May 15, 2002

**TECHNICAL STAFF REPORT:**

TO: The Prince Georges County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner

SUBJECT: **Certified Nonconforming Use Application No. 3632-2002-U**

REQUEST: **Certification of 172 Nonconforming Apartments**

RECOMMENDATION: **APPROVAL**

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NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated above. 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 property is located at the northeast quadrant of the intersection of Cherry Lane and the Baltimore & Ohio Railroad line, approximately 700 feet west of Laurel-Bowie Road (MD 197). It comprises approximately 12.30 acres of land and is improved with a 172-unit apartment development known as the Cherry Branch Townhomes. The property has approximately 125 feet of frontage on Cherry Lane from which it is accessed. It also has 50 feet of right-of-way on Hans Place.
- B. History: The property is part of a larger property, consisting of three parcels (Parcels B, C, and D) with a total of 23.5 acres that was the subject of Special Exception 1892. That application was granted on April 15, 1969, allowing the construction of a 172-unit apartment project on the subject property (Parcel B) that exceeded the allowable bedroom percentages. The remaining parcels were later developed with multifamily townhomes and townhouses. The subject property was retained in the R-18 Zone in the approved 1990 Sectional Map Amendment for Subregion I.
- C. Master Plan Recommendation: The 1990 *Approved Master Plan for Subregion I* recommends the property for residential development at low-urban density (garden apartments and townhouses at a density of 10.0 to 12.0 dwelling units per acre).
- D. Request: The applicant requests certification of a 172-unit existing apartment development. The apartment development exceeds the current maximum density allowed in the R-18 Zone of 12 units per acre, providing 13.9 units per acre. In addition, it does not conform to the 30-foot front yard requirement, providing only a 25.9-foot front yard.
- E. Surrounding Uses: The immediate area surrounding the property is characterized by residential developments (townhouses, garden apartments and a few single-family dwellings) in the R-18, R-T and R-R Zones, with light industrial uses in the I-1 Zone. The residential and industrial uses are separated by the Baltimore & Ohio Railroad line. The subject property and the adjoining properties to the north and southeast are zoned R-18. There are R-T zoned properties to the east and R-R zoned properties to the northeast. Industrially zoned properties (Avondale Industrial Area) are located to the west, across the railroad. To the south across Cherry Lane and east of the railroad are properties in the C-O 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 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.**
  - (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.**

According to the applicant, the apartments were originally constructed in 1969; however, no record of a use and occupancy permit could be found for the apartments. In response to the applicant's request for information regarding the use and occupancy permit, the Prince George's County Department of Environmental Resources, Community Standards Division, offered the following comments (also see the Division's letter to the applicant, dated December 24, 2001):

...These apartments were apparently constructed prior to our computerized records, and our old paper records do not have copies of the original permits. The permit # is 128-72U.

Housing records indicate that these buildings were constructed under valid county permits and rental licenses have been issued since somewhere around 1972. Issuance of a rental license carried with it an approval by the housing inspector that

the building can be legally occupied. Rental licenses have continued to be provided for this complex. In addition, research indicates that there are no outstanding violations of the county Zoning Ordinance pending at this time.

As noted SE-1892 was granted with conditions in 1969, allowing a variation to the allowable bedroom percentages. The property that was the subject SE 1892 covered an area consisting of three parcels totaling 23.5 acres.

In a supplemental submission, the applicant provided the following information on the original three parcels:

**Parcel B**

The property shown on the survey submitted with this NCU application is the same land designated as Parcel B as shown on the Plat of Subdivision entitled ■Parcels A, B & C of Kimberly Gardens• and recorded among the land records of Prince George's County, Maryland, in Plat Book WWW73, at page 74. This Parcel B is shown to have 12.69 acres. Approximately 0.30 acre was lost due to the widening of Cherry Lane (Exhibit A). SE-1892, approved on April 15, 1969 proposed multifamily dwelling units.

**Parcel C**

On October 3, 1970, Parcel C (a 5-acre tract) was the subject of SE-2441. This tract was proposed for the construction of a 50-unit townhouse project. SE-2441 was approved on January 8, 1971 (Exhibit B).

**Parcel D**

On May 23, 1988, Parcel D, which consists of 15.38 acres, was the subject of SE-3863 and subsequent revisions under the same special exception number submitted on October 4, 1989, May 31, 1990, and June 10, 1991. This tract was proposed for the construction of a planned retirement community development. While the 15.38 acres in Parcel D does not involve any of the 12.30 acres of Parcel B, it does include approximately half of the 5-acre tract known as Parcel C, which was subject to SE-2441. SE-3863 was approved on November 28, 1988 (Exhibit C).

To the extent that they are applicable, some of the six conditions of approval for SE-1892 are met on the subject property (Parcel B). The remaining conditions cannot be met or are no longer applicable due to changes in the development pattern of the area and the two other parcels (Parcels C and D).

As noted, records indicate that the apartments have been operated legally at least since 1972. The maximum allowed density for multifamily developments have been amended several times in the past 40 years. The subject property first became nonconforming in May 1975 with the adoption of Council Bill 51-1975. The current Zoning Ordinance for multifamily developments in the R-18 Zone requires a minimum lot area of 16,000 square feet with a maximum of 12 dwelling units per acre. The subject property is developed at 13.9 units per acre. Moreover, due to a right-of-way acquisition by the State Highway Administration (SHA) in 1987, the property does not conform to the 30-foot front yard requirement, instead providing a depth of only 25.9 feet. The applicant•s

request for certification is due to the nonconformity of the subject apartments to the current maximum density requirements.

G. Documentary Evidence: The applicant has submitted the following documentation, which establishes existence of the subject apartments prior to the adoption of Council Bill 51-1975 on May 6, 1975, and its continuous use since:

1. Apartment license applications (for new licenses and renewals) to the Prince Georges County Department of Licenses and Permits with license issuance and renewals for the years 1971 to 2003
2. A letter dated December 24, 2001, from the Prince Georges County Department of Environmental Resources, Community Standards Division, verifying that the subject apartments are constructed under valid county permits and rental licenses have been issued since somewhere around 1972.

**CONCLUSION:**

Based on the evidence submitted by the applicant and the lack of contradictory evidence from other sources, staff concludes that the subject apartments were constructed in accordance with the requirements of the Zoning Ordinance for the R-18 Zone, prior to its amendment in May 1975. The documentary evidence also demonstrates the continued use of the property since that time. Therefore, it is recommended that Application No. NCU-3632-2002-U be APPROVED for 172 apartments as a certified nonconforming use.