



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Certification of a Nonconforming Use

CNU-6562-2003

Application	General Data
Project Name: Victoria Station Apartments Location: Southeast corner of Merrimac Drive and 14 th Street, known as 1401 Merrimac Drive, Adelphi, MD Applicant/Address: Sawyer Realty Holdings, LLC 75 Second Avenue, Suite 500 Needham, MA 02494	Date Accepted: 1-31-03
	Planning Board Action Limit: N/A
	Plan Acreage: 4.19
	Zone: R-18
	Dwelling Units: 101
	Square Footage: 63,600
	Planning Area: 65
	Council District: 02
	Municipality: None
	200-Scale Base Map: 210NE02

Purpose of Application	Notice Dates
Certification of 101 multifamily dwellings	Adjoining Property Owners: 8-29-03 (CB-15-1998)
	Previous Parties of Record: N/A (CB-13-1997)
	Sign(s) Posted on Site: 8-22-03
	Variance(s): Adjoining Property Owners: N/A

Staff Recommendation		Staff Reviewer: Jimi Jones	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

September 17, 2003

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Jimi Jones, Planning Coordinator

SUBJECT: **Certified Nonconforming Use Application No. CNU- 6562-2003**

REQUEST: **Certification of a 101-Unit Multifamily Apartment Building**

RECOMMENDATION: **APPROVAL**

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.

FINDINGS:

- A. Location and Field Inspection:** The property is a rectangular-shaped parcel located on the southeast corner of Merrimack Drive and 14th Street, about 600 feet west of New Hampshire Avenue. This parcel is developed with six garden apartment buildings known as the Victoria Station Apartments. The development consists of three 3-story, one 2-story and one 1-story brick buildings. There are three asphalt parking areas with entrances along 14th Street that serve the development.

B. Development Data Summary

	EXISTING	PROPOSED
Zone(s)	R-18	R-18
Use(s)	Multifamily Dwellings	Multifamily Dwellings
Acreage	4.19 ac	4.19 ac
Lots	1	1
Parcels	1	1
Square Footage/GFA	63.600	63.600
Dwelling Units:		
Multifamily	101 Units	101 Units

- C. History:** In December 1948, Zoning Map Amendment A-1246 was approved, which placed the subject property in the Residential “C” Zone subject to the requirements of the R-18 Zone. The property was officially placed in the R-18 Zone on November 29, 1949, with the adoption of the Zoning Ordinance for the Regional District. The subject apartment complex was constructed in 1949 in accordance with the R-18 Zone requirements as they existed at that time.
- D. Master Plan Recommendation:** The Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity (1989) recommends urban density residential development (12.0 to 16.9 dwelling units per acre) for the subject property. The 2002 General Plan places the property in the Developing Tier.
- E. Request:** The applicant wishes to certify an existing 101-unit multifamily apartment complex in the R-18 Zone as a certified nonconforming use. The subject apartment complex has a density of 24 units per acre. However, the maximum density permitted in the R-18 Zone is 12 units per acre. At the time the use was constructed, the Ordinance required one parking space per dwelling unit. Thus, 101 spaces were required. The subject property only provides 75 spaces. The applicant also wishes to validate the original parking layout.
- F. Surrounding Uses:**
- | | |
|---------|--|
| North – | Directly across Merrimack Drive are the Hampshire Village Apartments and single-family detached homes to the northeast along 15 th Street in the R-18 Zone. Garden apartments across Merrimack Drive to the northwest are also part of the Victoria Station development. These apartments are in the R-18 Zone. |
| East - | Victoria Station Apartments in the R-18 Zone. |
| South - | Victoria Station Apartments in the R-18 Zone. |
| West - | Across 14 th Street are garden apartments 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 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.**

H. Documentary Evidence: The applicant submits the following information to document the existence of the subject use:

1. Maryland Department of Assessments and Taxation real property data search that identifies the subject development as built in 1950.

2. Letter dated January 9, 2002, from the Department of Environmental Resources indicating that the property has been continuously licensed as an apartment complex since 1971.
3. Copies of apartment licenses from 1970 to present.
4. Aerial photo from 1965 showing the subject development.
5. A plat from May 1949.

The applicant has also submitted a legal description of the property and a site plan showing the use, size and locations of the buildings as required. There is no record of a use and occupancy permit issued prior to the date the use became nonconforming.

CONCLUSION:

The record indicates that this 101-unit apartment complex was established in 1950 in accordance with the requirements of the R-18 Zone. The Zoning Ordinance in effect at that time set a minimum of 1,800 square feet of net lot area per dwelling unit in the R-18 Zone. On January 1, 1964, the density requirements changed from 1,800 square feet of net lot area per dwelling unit to 2,000 square feet. At that time only 91 dwelling units would have been permitted. Therefore, the use has been nonconforming since January 1, 1964.

The applicant has applied for a use and occupancy permit but does not currently have a valid permit. The applicant notes that the subject use does not meet the parking requirements in effect for the R-18 Zone in 1949. At the time the use was constructed, the Ordinance required one parking space per dwelling unit. Thus, 101 spaces were required. The subject property only provides 75 spaces. However, it appears that the parking was constructed this way and the parking has not changed. The applicant has submitted an aerial photo from 1965 showing that no changes have been made to the parking. The parking has remained consistent since the building and parking area were constructed. The applicant wishes to validate the original parking layout.

The applicant has submitted the required documentation, the most compelling of which is the Maryland Department of Assessments and Taxation real property data search that identifies the subject development as built in 1950. Staff therefore recommends APPROVAL of this application.