



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

Certified Nonconforming Use CNU-20554-10

Application	General Data	
Project Name: Stephens Apartments Location: West side of Columbia Avenue, approximately 180 feet south of College Avenue. Applicant/Address: Spencer Stephens, Jr. 11525 Van Brady Road Upper Marlboro, MD 20772 Property Owner: Maurie F. Stevens Revocable Trust 11525 Van Brady Road Upper Marlboro, MD 20772	Planning Board Hearing Date:	07/14/11
	Staff Report Date:	06/23/11
	Date Accepted:	03/10/11
	Planning Board Action Limit:	N/A
	Plan Acreage:	0.275
	Zone:	R-18
	Gross Floor Area (sq. ft.):	5,166
	Lots:	1
	Parcel:	N/A
	Planning Area:	66
	Tier:	Developed
	Council District:	03
	Election District	21
	Municipality:	College Park
	200-Scale Base Map:	209NE04

Purpose of Application	Notice Dates	
Certification of a nonconforming use for a six-unit multifamily apartment complex.	Informational Mailing	09/30/10
	Acceptance Mailing:	03/07/11
	Sign Posting Deadline:	06/14/11

Staff Recommendation		Staff Reviewer: Ivy R. Thompson Phone Number: 301-952-4326 E-mail: Ivy.Thompson@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Zoning Supervisor

FROM: Ivy R. Thompson, Senior Planner

SUBJECT: **Certified Nonconforming Use Application No. CNU-20554-10**

REQUEST: **Certification of a nonconforming use for a six-unit multifamily apartment complex.**

RECOMMENDATION: **APPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of July 14, 2011. The Planning Board also encourages all interested persons to request to become a person of record for this application.

Requests to become a person of record should be made in writing and addressed to The Maryland-National Capital Park and Planning Commission, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Please call 301-952-3530 for additional information.

FINDINGS

- A. **Location and Field Inspection:** The subject property is located on the west side of Columbia Avenue, approximately 180 feet south of College Avenue. The site is developed with a single, two-story, brick multifamily apartment building on 0.2750 acre. The building located at 7404 Columbia Avenue, College Park, Maryland has six units: four one-bedroom units, two efficiencies, and a basement. Access to the development is provided via ingress/egress on Columbia Avenue.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone	R-18	Unchanged
Acreage	0.2750 total	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Bedroom Percentages		
Efficiency	2 (20%)	Unchanged
1 BR	4 (80%)	Unchanged
Lot Coverage	2,000 s.f./d.u. (21.8 s.f./6 units)	Unchanged

- C. **History:** The building, known as 7404 Columbia Avenue Apartments, was legally constructed as a seven-unit apartment building in 1957. The complex became nonconforming on May 6, 1975, when the Zoning Ordinance was amended to change the maximum density in the Multifamily Medium Density Residential (R-18) Zone from 1,800 square feet of net lot area per dwelling unit per acre to the current density of 12 units per acre per County Council Bill CB-51-1975. The 7404 Columbia Avenue Apartments were constructed as a seven-unit building at a density of 6.67 dwelling units per acre. The building was purchased in 1981 by the current owner and her husband as a seven-unit multifamily apartment building. The seventh unit, a basement apartment, was flooded in 2008 as the result of a storm. The water damage was so severe that the tenants were removed and the unit was deconstructed and treated for mold. As a result, it was determined that it would be too costly to rebuild the seventh unit for rent. The building is now inspected yearly as a six-unit building. The seventh unit, previously located in the basement, has not existed or operated as an apartment unit since 2008 when it was deconstructed. Therefore, per the Zoning Ordinance, the apartment building must be evaluated as a six-unit multifamily building. The site plan includes a table that indicates the Zoning Ordinance requirements for R-18 at the time the apartments were constructed, the current R-18 Zoning Ordinance requirements, and where the complex conforms or deviates from those requirements. The site plan provided is in conformance with the 1957 Zoning Ordinance requirements. The applicant applied for a Use and Occupancy Permit (3450-2009-00), and was denied because no prior use and occupancy permits for the property could be found.
- D. **Request:** The applicant requests certification of an existing, six-unit multifamily apartment complex that was built in 1957 as a seven-unit building, when the property was originally zoned R-18. Because development regulations 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 three units are allowed in the development. The apartment complex, however, has six dwelling units (the seventh unit was removed in 2008 due to a flood), which is what was permitted according to the 1957 Zoning Ordinance R-18 regulations.

E. **Surrounding Uses:** The site is surrounded by the following uses:

North—Two properties zoned One-Family Detached Residential (R-55) improved with single family residence and the University of Maryland—College Park campus

West—Two properties; one zoned One-Family Detached Residential (R-55) improved with a single-family residences and the other zoned Multifamily Medium Density Residential (R-18) improved with a multi-family apartment building.

South—Property zoned Multifamily Medium Density Residential (R-18) improved with a two-story apartment building

East—Columbia Avenue and fraternity and sorority houses associated with the University of Maryland

F. **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 the use began. Second, there must be no break in operation for more than 180 days since the use became nonconforming.

Section 27-244 of the Zoning Ordinance sets forth the following specific requirements for certifying a nonconforming use:

(a) **In general.**

(1) **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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).**

(b) **Application for use and occupancy permit.**

(1) **The applicant shall file for a use and occupancy permit in accordance with Division 7 of this Part.**

(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 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;

(C) Specific data showing:

- (i) The exact nature, size, and location of the building, structure, and use;**
- (ii) A legal description of the property; and**
- (iii) 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's documentation, 7404 Columbia Avenue Apartments was constructed in 1957. When the applicant applied for a use and occupancy permit in 2010, the Planning Information Services staff could not verify that the 7404 Columbia Avenue 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) of the Zoning Ordinance, 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. An e-mail dated November 8, 2012 from Lee Ferguson, Assessor Manager, State Department of Assessments and Taxation for Prince George's County and a print out of the Maryland Department of Assessments and Taxation, Real Property Data Search. The e-mail states that records indicate that the building has been assessed as a multi-unit apartment building since 1975 (and since its construction in 1957) (Exhibit 1).
2. A letter dated October 14, 2010 from the Washington Suburban Sanitary Commission (WSSC) citing a continuous service connection since 1957 (Exhibit 2).
3. Rental housing license and inspections from the City of College Park (Exhibit 3).
 - (a) Rental licenses and inspections from 1969 to 2008.
 - (b) Licenses from 2009 to 2012 inspected and passed (pending this application).
4. Property deed (Exhibit 4).
5. Affidavit of Memorandum from Terrance O'Connor, CPA, and tax documents providing evidence of the property being used as a multi-unit apartment building since purchase in November 1981 (Exhibit 5).

6. A letter from Potomac Electric Power Company (PEPCO), Credit Department, indicating December 1, 1981 as the date the account was opened for 7404 Columbia Avenue, College Park, Maryland, and that the account is currently active (Exhibit 6).
7. Prince George's County Department of Environmental Resources Annual Boiler License applications from 1983 to 1994 (Exhibit 7).
8. Copies of signed leases 1989 through 2010 (Exhibit 8).
9. A letter from Jeannie Dierker, Cintas Corporation, indicating service of the property since October 1995 to present (Exhibit 9).
10. An e-mail from Charlene Stevens, IBC Sales Representative, indicating service by the Waste Management Division since October 1, 1998 (Exhibit 10).
11. Property Power of Attorney of Maurie F. Stephens and Revocable Trust documents dated June 14, 2005 (Exhibit 11).

DISCUSSION

In staff's opinion, the above evidence which consists of written communication from the County Assessor's Office citing the building assessed as an apartment building, Permits from the City of College Park dating back to 1969, Boiler permits from Prince George's County, written letters from local utility and other service companies, the property deed, an affidavit from the property owners accountant, and lease agreements dating back to 1989, supports the applicant's claim that the 7404 Columbia Avenue Apartment complex has been in continuous operation since being constructed in 1957 and most importantly since the use became nonconforming in 1975. The site was developed as a seven-unit apartment building in compliance with the 1957 Zoning Ordinance requirements. The subject property, currently, has a total of six-multifamily dwelling units. The seventh unit, previously located in the basement, has not existed or operated as an apartment unit since 2008 when it was deconstructed. Therefore, per the Zoning Ordinance, the apartment building must be evaluated as a six-unit multifamily building because the seventh unit has not existed for more than 180 days. The nonconforming use began in 1975 when the maximum density changed a minimum of 2,000 square feet net lot area per dwelling unit to three dwelling units per acre pursuant to County Council Bill (CB-51-1975). The allowable density on the subject site in 1957 was 6.67 (round up to 7) dwelling units per acre on a total of .275 acres. In 1975, the allowable density on .275 acres became three dwelling units. The current density, however, for the existing six-unit apartment building will be slightly less (six dwelling units per acre) on .275 acres, than what was constructed in 1957.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, staff concludes that the subject property, the 7404 Columbia Avenue Apartments, were constructed in accordance with the requirements of the Zoning Ordinance in effect in 1957. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since their construction. Therefore, it is recommended that Certified Nonconforming Use CNU-20554-10 be APPROVED as a certified nonconforming use.