The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

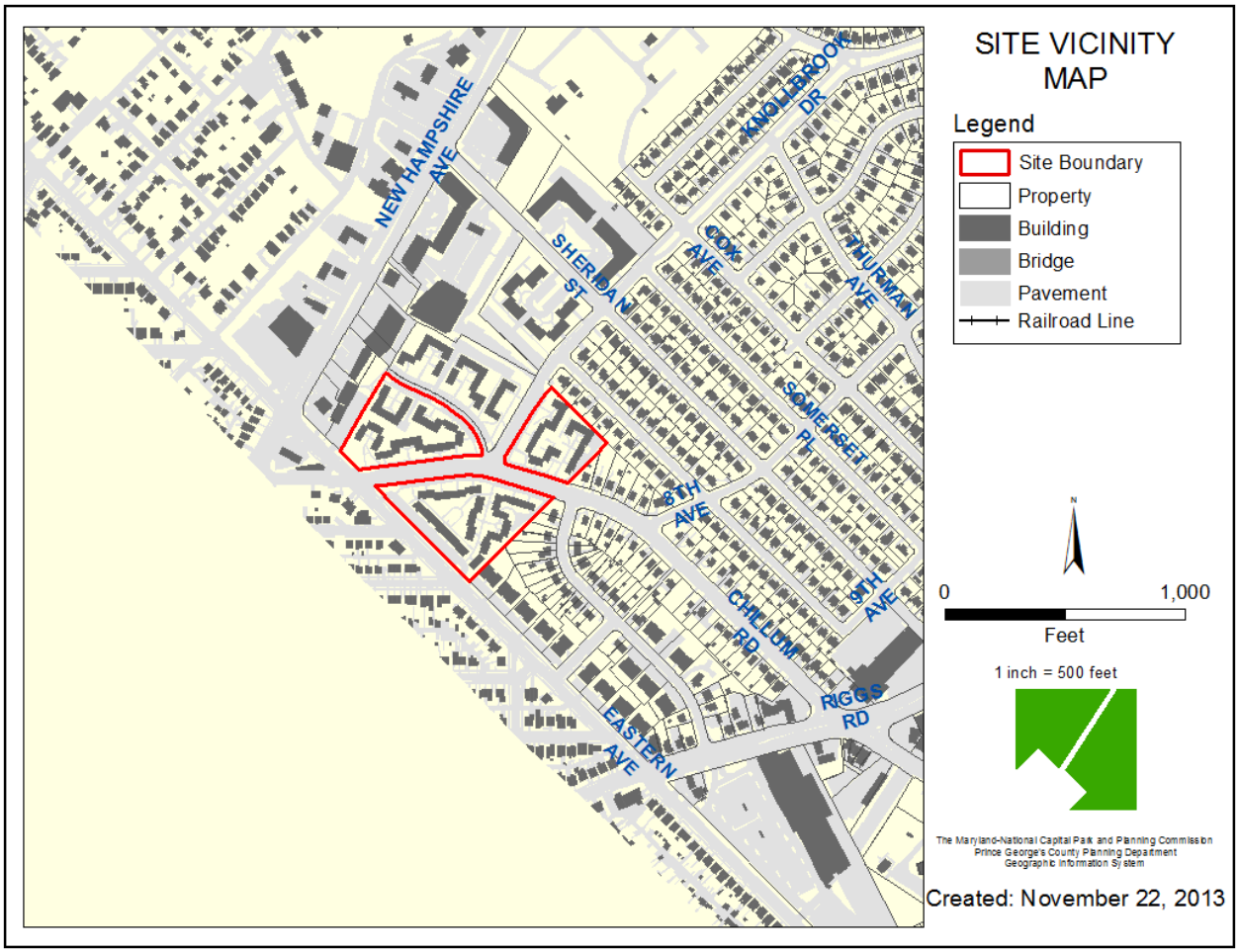
Note: *Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.*

Certification of Nonconforming Use CNU-23538-13

Application	**General Data**	
Project Name: Fleetwood Village Apartments	Planning Board Hearing Date:	03/27/14
	Staff Report Date:	03/06/14
Location: Located east of Eastern Avenue and north of Chillum Road, at the intersection of Eastern Avenue.	Date Accepted:	01/10/14
	Planning Board Action Limit:	N/A
	Plan Acreage:	9.37
	Zone:	R-18
Applicant/Address: Fleetwood Village Limited Partnership 7007 Heatherhill Road Bethesda, MD 20817	Gross Floor Area:	91,528 sq. ft.
	Lots:	N/A
	Parcels:	3
Property Owner: Same as applicant	Planning Area:	65
	Tier:	Developed
	Council District:	02
	Election District	17
	Municipality:	N/A
	200-Scale Base Map:	207NE01

Purpose of Application	**Notice Dates**	
Certification of a nonconforming use for a 252-unit multifamily apartment building located on three separate parcels in the R-18 Zone.	Informational Mailing	11/26/13
	Acceptance Mailing:	01/08/14
	Sign Posting Deadline:	02/24/14

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			


SITE VICINITY MAP
Legend
Site Boundary
Property
Building
Bridge
Pavement
Railroad Line
NEW HAMPSHIRE AVE
SHERIDAN ST
KNOLLBROOK DR
COX AVE
TRUMAN AVE
SOMERSET PL
8TH AVE
9TH AVE
CHILLUM RD
RIGGS RD
EASTERN AVE
N
0
1,000
Feet
1 inch = 500 feet
The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Geographic Information System
Created: November 22, 2013

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, Supervisor, Zoning Review Section, Development Review Division

FROM: Ivy R. Thompson, Senior Planner, Zoning Review Section, Development Review Division

SUBJECT: **Certification of Nonconforming Use Application No. CNU-23538-13**

REQUEST: **Certification of a nonconforming use for a 252-unit multifamily apartment building located on three separate parcels in the R-18 Zone.**

RECOMMENDATION: **APPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of March 27, 2014. 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 identified as three separate deed parcels located in the northeastern, northwestern, and southern quadrants of the intersections of Eastern Avenue, Greenlawn Drive, Knollbrook Drive, and Chillum Road. The multifamily garden-style apartment development has a total of 252 dwelling units on a combined 9.379 acres. All three parcels are zoned Multifamily Medium Density Residential (R-18).

Parcel One (3.75 acres) is located in the southern quadrant of Eastern Avenue and Chillum Road. Parcel One is developed with 12 two-story brick buildings and 8 three-story brick buildings, with 103 total units. Parking is available along the southeastern quadrant of Eastern Avenue and Chillum Road. There is an existing playground located in the center of the complex.

Parcel Two (2.17 acres) is located at the intersection of Knollbrook Drive and Chillum Road, and is developed with 7 two-story brick buildings and 3 three-story brick buildings, with 58 total units. Parking is along Knollbrook Drive and Chillum Road. There is a small green space area located in the center of the complex.

Parcel Three (3.45 acres) is located at the intersections of Eastern Avenue to the east, Chillum Road to the south, and Greenlawn Avenue to the northwest. Parcel Three is developed with 5 three-story brick buildings and 11 two-story brick buildings, with a total of 91 units. There is no designated play area. Parking is provided along Chillum Road and Greenlawn Drive.

There is no vehicular access to the development. Access to the development is provided via pedestrian walkways along Chillum Road, Knollbrook Drive, and Greenlawn Drive. A total of 209 parking spaces (which include 133 spaces in the right-of-way) are provided along Chillum Road, Knollbrook Drive, Greenlawn Drive, and a service drive off of Eastern Avenue. The property has access to multiple Metrobus routes (F1, F2, K6, K9, R2, and R4), which provides public transit service to residents. No loading spaces are required.

B. **Development Data Summary:**

	EXISTING	**PROPOSED**
Zone	R-18	Unchanged
Acreage Parcel One Parcel Two Parcel Three	9.37 total 3.75 2.17 3.45	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Site Density Parcel One Parcel Two Parcel Three	 7.4 d.u./a 26.7 d.u./a 26.4 d.u./a	Unchanged

	EXISTING	PROPOSED
Bedroom Percentages Parcel One 1BR 2 BR* Parcel Two 1BR 2 BR* Parcel Three 1BR 2 BR*	 35 (34%) 65 (66%) 22 (38%) 36 (62%) 25 (27%) 66 (73%)	Unchanged
**Unused bedroom percentages for three or more bedroom apartments may be added to the maximum allowed percentages for two-bedroom apartment units.*		
Lot Coverage Parcel One Parcel Two Parcel Three	16,000 s.f./d.u. 163,350/ s.f./10.21 d.u. 94,525.2 s.f./5.9 d.u. 150,282 s.f./9.39 d.u.	Unchanged

C. **History:** The Fleetwood Village Apartments were constructed as a 252-unit garden-style apartment complex in 1949 at a density of 27.4 dwelling units per acre. Off-street parking was not a requirement to serve the property at that time, so it was not provided. However, there are a total of 209 parking spaces provided. The complex became nonconforming on November 29, 1949 when the property was placed in the Multifamily Medium Density Residential (R-18) Zone via a comprehensive rezoning, when the density changed to 16,000 square feet per net lot area per unit. The site plan includes a table that indicates the Zoning Ordinance requirements of the "Residence C" zone classification in place at the time the apartments were constructed, the current R-18 Zoning Ordinance requirements, and where the complex conforms to or deviates from those requirements. Bedroom percentages are also provided. There are no previously issued use and occupancy permits for the Fleetwood Village apartment complex. The applicant applied for a Use and Occupancy Permit (23535-2013) and was denied because no prior use and occupancy permits for the property could be found; therefore, a public hearing before the Planning Board is required.

D. **Request:** The applicant requests certification of an existing, 252-unit, multifamily, garden-style apartment complex that was built in 1949, when the property was subject to the requirements of the Residence "C" zone classification. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began on November 29, 1949 when the property was rezoned to the R-18 Zone. Based on the current standard of square footage per dwelling unit for the R-18 Zone, only 239 dwelling units (25.5 d.u./acre) are permitted. The apartment complex, however, has 252 dwelling units, which is what was permitted according to the Residence "C" zone regulations in place at the time of construction in 1949.

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

North— Property zoned Commercial Shopping Center (C-S-C) and Rural Residential (R-18), developed with retail uses and multifamily apartments.

West— Eastern Avenue and buildings developed with retail and residential uses in Washington, District of Columbia.

East— Property zoned One-Family Detached Residential (R-55) improved with single-family residences.

South— Properties zoned R-18 improved with multifamily residences; and zoned Townhouse (R-T) and R-55 improved with single-family residences.

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.

(b) Application for use and occupancy permit.

(1) The applicant shall file an application 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, the Fleetwood Village apartments were constructed in 1949. When the applicant applied for a use and occupancy permit in 2013, the Planning Information Services staff could not verify that the Fleetwood Village Apartments were built in accordance with requirements in effect at the time of construction because the 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 (November 29, 1949) and that it has been in continuous operation since that time.

The applicant submitted the following documentary evidence in support of the application:

1. M-NCPPC aerial maps for the years 1965, 1968, 1980, 1984, 1993, 1998, 2000, 2005-2007, 2009, and 2011 (Exhibit 1).

2. Maryland State Department of Assessments and Taxation Property record, which notes the sale of the property on June 1, 1973 (Exhibit 2).

3. Prince George's County Rental Housing Licenses 2001–2015 (Exhibit 3).

4. Prince George's County Apartment License applications dated June 11, 1993; June 1, 1995; and June 17, 1997 (Exhibit 4).

5. Apartment Income and Expense questionnaires submitted to Prince George's County for the years 1982–2012 (Exhibit 5).

6. An electronic site plan dated July 17, 2001.

7. A letter from Arnold Berlin citing he resided on the property from 1951 to 1959.

8. A letter from WSSC citing the meter installation date and a continuous service statement.

9. Prince George's County permit history showing case numbers and permit types for 1992, 1996, and 2002.

10. Income tax returns for the years 1973–1981.

DISCUSSION

The evaluation of the Fleetwood Village Apartments is based on both the Residence "C" zoning in place at the time of development construction in 1949 and a separate evaluation based upon the R-18 zoning requirements to reflect the current zoning of the property, which became effective November 29, 1949. The development exceeds the current allowable density in the R-18 Zone and the

allowable bedroom percentages, hence the request for certification of a nonconforming use. The use became nonconforming on November 29, 1949 when the density changed from 625 square feet to 1,800 square feet of net lot area per unit. There is no previous record of a prior use and occupancy permit.

Parcel One has a total of 103 multifamily dwelling units. The allowable density on the subject site on November 29, 1949, per the R-18 Zone imposed at that time, was 10.2 dwelling units per acre on a total of 3.75 acres. There is no vehicular access to Parcel One. Access to the development is provided via pedestrian walkways along Chillum Road and Eastern Avenue. A total of 94 parking spaces (which include 55 spaces in the right-of-way) are provided along Chillum Road and a service drive off of Eastern Avenue. No loading spaces are required.

Parcel Two has a total of 58 multifamily dwelling units. The allowable density on the subject site on November 29, 1949, per the R-18 Zone imposed at that time, was 5.9 dwelling units per acre on a total of 2.17 acres. There is no vehicular access to Parcel Two. Access to the development is provided via pedestrian walkways along Chillum Road and Knollbrook Drive. A total of 50 parking spaces (which include 45 spaces in the right-of-way) are provided along Chillum Road and a service drive off of Eastern Avenue. No loading spaces are required.

Parcel Three has a total of 91 multifamily dwelling units. The allowable density on the subject site on November 29, 1949, per the R-18 Zone imposed at that time, was 9.39 dwelling units per acre on a total of 3.45 acres. There is no vehicular access to Parcel Three. Access to the development is provided via pedestrian walkways along Chillum Road and Greenlawn Drive. A total of 65 parking spaces (which include 33 spaces in the right-of-way) are provided along Chillum Road and Greenlawn Drive. No loading spaces are required.

In staff's opinion, the above evidence which consists of M-NCPPC aerial maps, a Maryland State Department of Assessments and Taxation property record noting the sale and use of the property, Prince George's County Rental Housing Licenses, Prince George's County Apartment License applications, Apartment Income and Expense questionnaires submitted to Prince George's County, a letter from Mr. Arnold Berlin, a letter from WSSC citing the meter installation date and a continuous service statement, Prince George's County permit history showing case numbers and permit types, and income tax returns, supports the applicant's claim that the Fleetwood Village apartment complex has been in continuous operation since being constructed in 1949. The subject development has a total of 252 multifamily dwelling units. The site was developed in compliance with the Residence "C" zoning requirements when it was constructed, not subject to the R-18 Zoning Ordinance requirements.

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 Fleetwood Village Apartments, was not subjected to the requirements of the Zoning Ordinance when constructed in 1949. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since 1949 when the use became nonconforming. Therefore, it is recommended that Certification of Nonconforming Use Application No. CNU-23538-13 be APPROVED as a certified nonconforming use.