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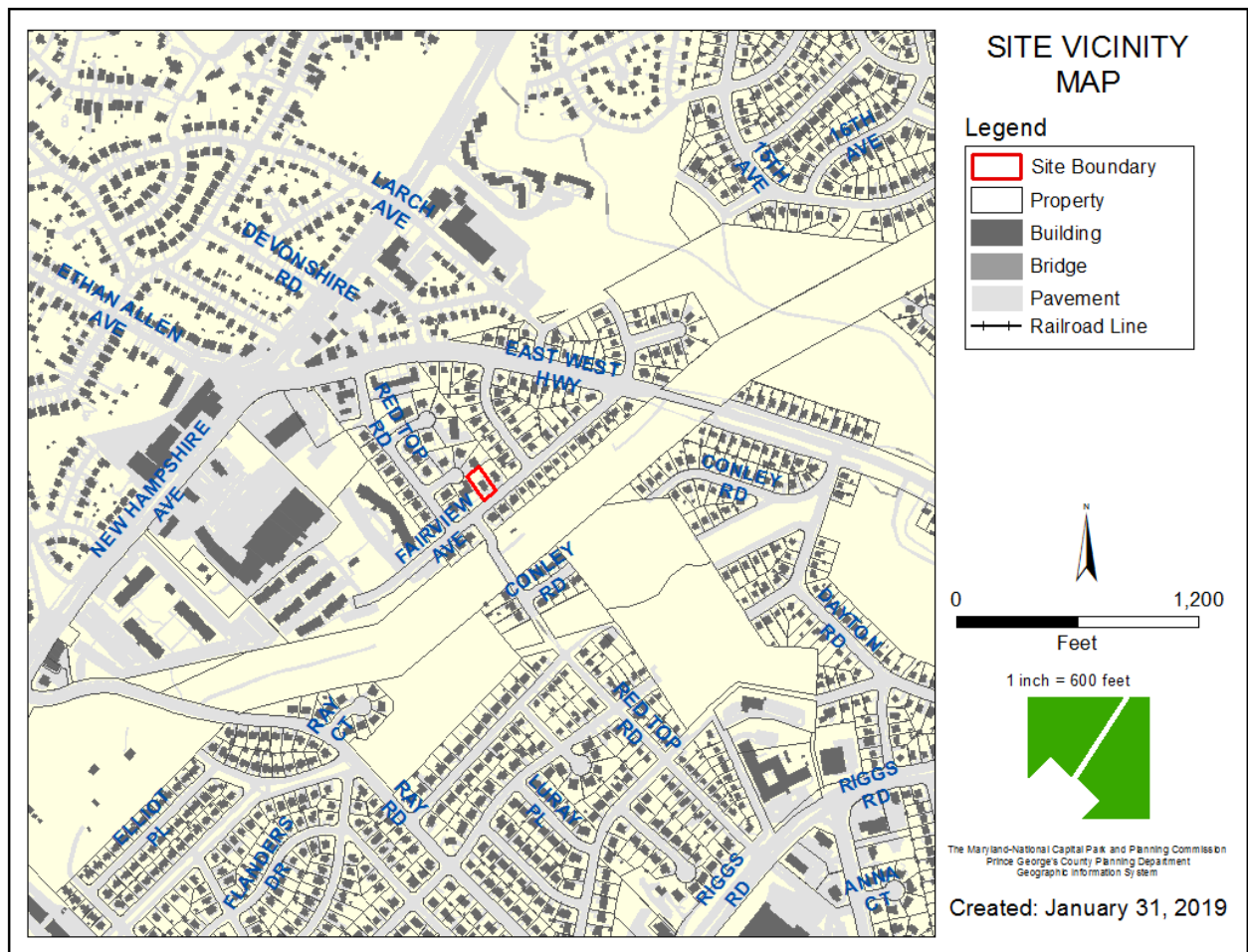
Certification of Nonconforming Use

CNU-27104-2017

Application	General Data	
Project Name: Brandon Investments Location: On the north side of Fairview Avenue, approximately 0.25 mile west of the intersection of Fairview Avenue and MD 410 (East West Highway) Applicant/Address: Moises Arias Brandon Investments, LLC 12813 Hammonton Road Silver Spring, MD 20904 Property Owner: Same as applicant	Planning Board Hearing Date:	02/28/19
	Staff Report Date:	02/12/19
	Date Accepted:	11/19/18
	Planning Board Action Limit:	N/A
	Plan Acreage:	10,804 sq. ft.
	Zone:	R-18
	Gross Floor Area (sq. ft.)/DUs:	3,963/6
	Lots:	1
	Parcels:	0
	Planning Area:	65
	Council District:	02
	Election District	17
	Municipality:	N/A
200-Scale Base Map:	208NE01	

Purpose of Application	Notice Dates	
Certification of a nonconforming use for a six-unit multifamily dwelling in the R-18 Zone.	Informational Mailing	09/27/17
	Acceptance Mailing:	11/15/18
	Sign Posting Deadline:	01/28/19

Staff Recommendation		Staff Reviewer: Ras Tafari Cannady II Phone Number: 301-952-3411 Email: Ras.Cannady@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: Sherri Conner, Acting Supervisor, Subdivision and Zoning Section
Development Review Division

FROM: Ras Tafari Cannady II, Senior Planner, Subdivision and Zoning Section
Development Review Division

SUBJECT: **Certification of Nonconforming Use CNU-27104-2017
Brandon Investments**

REQUEST: **Certification of a nonconforming use for a six-unit multifamily dwelling in the
R-18 Zone.**

RECOMMENDATION: **APPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of February 28, 2019. 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

1. **Location and Field Inspection:** The subject property, which consists of Lot 9A, Block 2, within the Hampshire View subdivision, is located on the north side of Fairview Avenue, approximately 0.25 mile, west of the intersection of Fairview Avenue and MD 410 (East West Highway). The property, addressed as 904 Fairview Avenue, Takoma Park, Maryland 20912, is zoned Multifamily Medium Density Residential (R-18). The site is developed with a 3,963-square-foot, two-story, brick, multifamily residential building, with a basement, on a 10,804-square-foot lot. The multifamily residential building is accessed through its legal frontage on Fairview Avenue.

On February 24, 1970, the Board of County Commissioners, sitting as the District Council, sitting in special session, waived parking for the entire multifamily dwelling unit neighborhood consisting of Lots 4 through 21, Block 2; Lots 1 through 9, Block 3; and Lots 1 through 3, Block 6, of the Hampshire View subdivision, in accordance with the recommendation of the chief zoning inspector. The subject property, more specifically described as Lot 9A, Block 2, within the Hampshire View subdivision, was included in the waiver of parking spaces. Parking for the multifamily building is available in the Fairview Avenue right-of-way.

2. **Development Data Summary:**

	EXISTING	PROPOSED
Zone	R-18	R-18
Acreage	10,804 sq. ft.	10,804 sq. ft.
Use(s)	Multifamily dwellings	Multifamily dwellings
Total Units	6	6
Site Density	36.14 dwelling units/acre	36.14 dwelling units/acre
Lot Coverage	21.80%	21.80%

3. **History:** The subject property was originally placed in the “A” Residential Zone when it was first included in the Maryland-Washington Regional District (Regional District) in 1928. The Prince George’s County Zoning Ordinance was amended in 1949, at which time the subject property was placed in the “C” Residential Zone. On November 29, 1949, when the comprehensive zoning of the County took place, the property was placed in the R-18 Zone.

The site was platted as Lot 9, Block 2, of Hampshire View, recorded in Plat Book WWW 17-5 on December 29, 1949. Subsequently, a lot line adjustment plat for Lots 8, 9, 10, and 11, Block 2, was approved, resulting in the subject site being platted as 9A, Block 2, of Hampshire View on August 31, 1950, recorded in Plat Book WWW 18-10.

According to the Maryland State Department of Assessments and Taxation (SDAT), the building on the subject site was constructed in 1951. The November 29, 1949 development standards would have permitted six dwelling units for the site based on the minimum net lot area requirement for multifamily dwellings being 5,500 square feet, with 1,800 square feet of lot area per dwelling unit. The site, which is 10,804 square feet and houses the six-unit multifamily dwelling units, met this provision.

Subsequently, the Zoning Ordinance was amended on January 1, 1964 (District Council Resolution No. 327-1963), which set forth a minimum net lot area requirement for multifamily buildings of 16,000 square feet, with 2,000 square feet of net lot area for each dwelling unit. Since the multifamily dwelling was already constructed by the time this text amendment was

implemented, the multifamily dwelling became nonconforming on January 1, 1964, due to the increase in the net lot area requirement for multifamily buildings and dwelling units.

The 1965 Zoning Ordinance had a stipulation that, in the case of any lot duly recorded among the Land Records of Prince George's County prior to November 29, 1949, the District Council shall have the power to permit the reduction of the minimum net lot area to not less than 4,000 square feet, where the District Council believes that such action is necessary in order to make possible the development of a deteriorated or obsolescent single-family residential area. However, the subject property, recorded on December 29, 1949, and re-recorded on August 31, 1950, did not qualify for this exemption.

Density requirements were changed again in 1989 to the current maximum of 12 units per acre per Council Bill CB-114-1989. Currently, the Zoning Ordinance limits the density of properties within the R-18 Zone to 12 dwelling units per acre, requiring a minimum lot size of 16,000 square feet.

All six dwelling units, which are existing, are one-bedroom. The site plan includes a table that indicates the Zoning Ordinance requirements of the 1951 R-18 Zone classification based on the November 29, 1949 Zoning Ordinance, the current R-18 Zoning Ordinance requirements, and how the complex conforms to (or deviates from) those requirements. The applicant applied for Use and Occupancy (U&O) Permit 27104-2017-U because no prior permits for the property could be located; therefore, a public hearing before the Prince George's County Planning Board is required.

4. **Request:** The applicant requests certification of a nonconforming use for a six-unit multifamily dwelling located at 904 Fairview Avenue, Takoma Park, Maryland 20912, which is zoned R-18. Zoning regulations changed between the time of construction of the building in 1951 and the current date. The nonconforming status began on January 1, 1964, when the Zoning Ordinance was amended to require a minimum net lot area requirement of 16,000 square feet for multifamily buildings and 2,000 square feet of net lot area per dwelling unit, necessitating certification as a nonconforming use.
5. **Master Plan Recommendation:** The 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity* and 1990 *Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67* (Langley Park-College Park-Greenbelt and Vicinity Master Plan and SMA) recommends multifamily development at an urban density. The SMA retained the subject property in the R-18 Zone. The vision for this area in the *Plan Prince George's 2035 Approved General Plan* is for a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.
6. **Surrounding Uses:** The site is surrounded on all sides by similar garden-style multifamily dwellings in the R-18 Zone. A majority of the multifamily dwellings immediately adjacent to the subject site have previously been certified as nonconforming multifamily dwellings. The following is a list of the surrounding properties, which includes those that were previously approved as nonconforming multifamily dwellings:

East— A multifamily dwelling within the Hampshire View subdivision, Lot 10A, Block 2 (CNU-15552-2014), zoned R-18 and single-family detached dwellings in the One-Family Detached Residential (R-55) Zone beyond.

- West—** Multifamily dwellings all within the Hampshire View subdivision and R-18 Zone, as follows:
- Block 2: Lot 6 – CNU-39878-2016
Lot 7 – CNU-15315-13
Lot 8A – CNU-31012-2015
- Block 3: Lot 1 – CNU-23930-2015
Lot 2 – CNU-23929-2015
Lot 3 – CNU-23928-2015
Lot 4 – CNU-23927-2017
Lot 5 – CNU-23926-2015
Lot 6 – CNU-58250-2015
Lot 7 – CNU-58255-2015
Lot 8 – CNU-55018-2015
Lot 9 – CNU-15141-13
- Parcel B: CNU-29896-08
- South—** Multifamily dwellings all within the Hampshire View subdivision and R-18 Zone, as follows:
- Block 5: Lots 1–3
- Block 6: Lot 1 – CNU-30447-13
Lot 2 – CNU-3331-07
Lot 3 – CNU-28713-07
- North—** Multifamily dwellings all within the Hampshire View subdivision and R-18 Zone, as follows:
- Block 2: Lot 1 – CNU-29721-2014
Lot 4 – CNU-24691-2016
Lot 5
Lot 11A – CNU-30449-13
Lot 12
Lot 13 – CNU-30021-13
Lot 14
Lot 15 – CNU-30458-13
Lot 16
Lot 17 – CNU-15886-14
Lot 18 – CNU-30020-13
Lot 19 – CNU-15817-2015
Lot 20 – CNU-15817-2015
Lot 21 – CNU-15817-2015

7. **Certification Requirements:** Section 27-107(a)(166) of the Zoning Ordinance defines a nonconforming use as:

- (A) The “Use” of any “Building,” “Structure,” or land which is not in conformance with a requirement of the Zone in which it is located (as it specifically applies to the “Use”), provided that:
 - (i) The requirement was adopted after the “Use” was lawfully established; or
 - (ii) The “Use” was established after the requirement was adopted and the District Council has validated a building, use and occupancy, or sign permit issued for it in error.
- (B) The term shall include any “Building,” “Structure,” or land used in connection with a “Nonconforming Use,” regardless of whether the “Building,” “Structure,” or land conforms to the physical requirements of the Zone in which it is located.

Certification of a nonconforming use requires that certain findings be made. 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). Any person making use of or relying upon the certification that is violating or has violated any conditions thereof, or that the use for which the certification was granted is being or has been exercised contrary to the terms or conditions of such approval shall be grounds for revocation proceedings in accordance with this Code.
- (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.

The applicant has filed an application for a U&O (Permit 27104-2017-U), 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;

The applicant has provided documentary evidence attempting to show the commencing date and continuous existence of the nonconforming use, which is listed in detail and evaluated further in the Analysis section of this report.

- (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 one hundred eighty (180) consecutive calendar days between the time the use became nonconforming and the date when the application is submitted, or that conditions on nonoperation for more than one hundred eighty (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;**

Limited documented evidence that the property had operated continuously since the time it became nonconforming in 1964 until the 1990s was provided, due to the archiving limitations of utility and rental licensing records and recent acquisition of the property by the current owner in 2017. The specific evidence put forth by the applicant is further outlined and evaluated in the Analysis section of this report.

- (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;**

The applicant has submitted a site plan, property deed, and record plat delineating the exact nature, size, and location of the building, structure, and use. Specifically, the metes and bounds delineated on the record plat shows the limits of the property. The site plan provides development and zoning requirements for properties zoned R-18 and locates the building within the site. The submitted floor plans show the precise location of each dwelling unit within the building.

- (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.**

The applicant does not possess a copy of a valid U&O permit issued for the property operating as a multifamily dwelling unit before it became a nonconforming use in 1964.

Analysis—The applicant has filed the subject application so the property may be certified as a nonconforming use. Certification of a nonconforming use requires that certain findings be made, in accordance with Section 27-244(f). The Planning Board must first determine whether the use was legally established prior to January 1, 1964, when the Zoning Ordinance was amended, rendering the use nonconforming. Secondly, there must not be a break in operation for more than 180 days, since the use became nonconforming.

The following documentary evidence was provided in support of the subject application to demonstrate the legal establishment of the multifamily dwelling and continuous operation:

- a. State of Maryland, Department of Labor, Licensing and Regulation–Basement Laundry Room Inspection Certificate showing an inspection date of October 14, 2016, with an expiration date of October 14, 2018.
- b. Prince George’s County Government, Department of Permitting, Inspections and Enforcement–Enforcement Division Apartment License Application Form dated June 12, 2017.
- c. Articles of Organization showing Brandon Investments, LLC as a Real Estate Investment and Rentals group dated March 29, 2017.
- d. Deed of Trust (Liber 39631, Folio 162) dated May 22, 2017, by and between Audrey A. Thorne and Sydney E. Thorne, GRANTORS, and Brandon Investments LLC, GRANTEE.
- e. Prince George’s County Government, Department of Permitting, Inspections and Enforcement – U&O Permit No. 27104-2017-00 dated June 16, 2017.
- f. Rental Housing Licenses obtained from the Department of Permitting, Inspections and Enforcement for the six-unit multifamily dwelling for the years 2001 to 2017.

The rental housing licenses are provided in the following order:

- (1) Rental Housing License Number: M-0134
Issue Date: June 24, 2015
Expiration Date: June 24, 2017
- (2) Rental Housing License Number: M-0134
Issue Date: June 24, 2013
Expiration Date: June 24, 2015
- (3) Rental Housing License Number: M-0134
Issue Date: June 24, 2011
Expiration Date: June 24, 2013
- (4) Rental Housing License Number: M-0134
Issue Date: June 24, 2009
Expiration Date: June 24, 2011
- (5) Rental Housing License Number: M-0134
Issue Date: June 24, 2007
Expiration Date: June 24, 2009
- (6) Rental Housing License Number: M-0134
Issue Date: June 24, 2005
Expiration Date: June 24, 2007

- (7) Rental Housing License Number: M-0134
Issue Date: May 19, 2003
Expiration Date: May 19, 2005
 - (8) Rental Housing License Number: M-0134
Issue Date: May 19, 2001
Expiration Date: May 19, 2003
- g. Apartment License Applications for the six-unit multifamily dwelling for the years 1992 to 2001, and copies of Apartment License Application agreements from October 16, 1992 to May 19, 2001.

The approved apartment license applications are provided in the following order:

- (1) 1999 Apartment License Application Number: 99-181
Issue Date: May 19, 1999
Expiration Date: May 19, 2001
 - (2) 1997 Apartment License Application Number: 97-255
Issue Date: May 19, 1997
Expiration Date: May 19, 1999
 - (3) 1995 Apartment License Application Number: 95-043
Issue Date: October 16, 1994
Expiration Date: October 16, 1996
 - (4) 1993 Apartment License Application Number: 93-057
Issue Date: October 16, 1992
Expiration Date: October 16, 1994
- h. Affidavit from Bill Murphy, owner of 905 Fairview Avenue (Sold in 2018), 903 Fairview Avenue, and 901 Fairview Avenue. This affidavit states that 904 Fairview Avenue has been in operation as a six-unit multifamily dwelling from 1997 to present.
- i. Letter from Suzanne Ludlow, City Manager of the City of Takoma Park and past Unification Coordinator confirming that, between 1979 and 1983, the building has not changed structurally. Additionally, Ludlow states that, as an employee of the City of Takoma Park since 1993, including serving as the Unification Coordinator overseeing the logistics of the County boundary line change in 1997, she would have been aware if significant changes occurred regarding the subject property.
- j. A letter dated November 28, 2018, from the Washington Suburban Sanitary Commission (WSSC), stating that the WSSC account for this address was established on September 1, 1965. The meter currently serving the property was installed on August 9, 2012. The installation date for the oldest meter was September 10, 1965. The record shows that the water and sewer services have been in use and available for this property since at least July 2, 1999. WSSC could not provide additional information due to archiving limitations.
- k. Current photos of the six-unit multifamily dwelling.

- l. A nonconforming use site plan for the subject property.
- m. A Maryland State Department of Assessment and Taxation Real Property Data Search page indicating that the primary structure was built in 1951.
- n. Final Plat for Block 2, Lot 9A, of Hampshire View dated August 31, 1950.
- o. Aerial photo from 1965 depicting an image of the multifamily dwelling.
- p. A receipt verifying purchase of a complete list of all adjoining property owners, registered association and municipalities located within a mile of the subject property; an affidavit and an information mailing letter that were mailed to all registered associations regarding 904 Fairview Avenue's request for Certification of Nonconforming Use Application No. 27104-2017 on September 28, 2017.
- q. The Maryland-National Capital Park and Planning Commission's (M-NCPPC) permit comments—M-NCPPC staff reviewed the use and occupancy permit for the property. It was then realized that prior permits 35679-2016-U, 25404-2015-U, and 3005-2002-U were placed on hold with the same outstanding comments and never pursued:

“All units are one bedroom. At the time of construction in 1951 the net lot area requirement for multifamily dwellings was a minimum of 1,800 square feet of lot area per dwelling unit. Based on a lot size of 10,804 s.f. square feet the 6 units met this requirement. On January 1, 1964, the Zoning Ordinance was amended to require a minimum of 2,000 square feet net lot area dwelling unit therefore only permitting 5 units. The current maximum of density of the R-18 Zone is 12 dwelling units per acre which would only permit a maximum of 3 units. Therefore, the apartment building must be certified as a nonconforming use. Off street parking for this property was waived by Resolution #82-1970 on February 24, 1970. Per Property Standards there is no prior use and occupancy permit for the subject property, therefore the certification must be heard by the Prince George's County Planning Board.”

While the applicant has submitted documentation attempting to prove that the property did not have a period of nonoperation for more than 180 consecutive days, the burden of proof showing the commencement and continuance operation of the use, since the date the property became nonconforming on January 1, 1964, was not submitted for the entirety of the last 55 years. Staff notes that the lack of submitted evidence is primarily due to archiving limitations by the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), the Washington Suburban Sanitary Commission (WSSC), the Potomac Electric Power Company, and other entities, and the applicant has furnished all documentation that is available from himself and Prince George's County.

On August 12, 2018, the applicant contacted DPIE requesting records of original construction documentation including permits, blueprints, or any documentation related to the construction of the property, in accordance with the Maryland Freedom of Information Act State Government Article 10-611--10-628. In a letter addressed to the applicant dated August 28, 2018, DPIE stated, “This office has no records responsive to your request.” A search of the permit history of the property did not reveal any major renovations or calamities that would have rendered the building unusable. The subject property is part of a larger subdivision known as Hampshire View, which is

developed with multifamily dwellings, having been constructed within the same time period, most of which have been previously certified as nonconforming uses.

Nonetheless, the applicant is before the Planning Board due to a lack of evidence in this case, pursuant to Section 27-244(f)(1)(A), to determine whether the use should be certified as nonconforming.

The required findings of the Planning Board are further described in Section 27-244(f)(4)(A), as follows:

(4) Planning Board Action

- (A) The Planning Board may decide to either grant or deny certification of the use as nonconforming. If it decides to certify that a nonconforming use actually exists and has continuously operated and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.**

In an email dated January 7, 2019, DPIE indicated that no outstanding code violations exist for the property, other than failure to have a U&O permit. Written documentation of the correspondence between staff and DPIE's Enforcement Division has been included in the backup of this technical staff report.

DISCUSSION

The evaluation of 904 Fairview Avenue (Brandon Investments) is based on the zoning in place at the time of development in 1951 and a separate evaluation of the current R-18 zoning requirements of the property. The development exceeds the current allowable density of 12 dwelling units per acre in the R-18 Zone; hence, the request for certification of a nonconforming use was filed.

The plat of the property recorded on August 31, 1950, the SDAT property record, and the 1949 Zoning Ordinance all establish that the property was developed in accordance with the development standards in place at that time. Additional evidence, which consists of multifamily rental and apartment licenses, and a letter from WSSC indicating that the property was metered in 1965 and has been in continual use since at least October 16, 1992, provide documentation of continual use. The letter from Suzanne Ludlow, City Manager of the City of Takoma Park and past Unification Coordinator, also confirms that (between 1979 and 1983) the building had not changed structurally. Staff is aware that archiving limitations for available utility and permit records have prevented the applicant from obtaining additional proof of continuous operation since the date of nonconformity, which is out of the owner's control. The owner was also unable to produce early rental records due to his limited time of ownership of the property.

However, the majority of the buildings surrounding the subject property were all built within two years of the subject dwelling, bolstering staff's opinion that the multifamily dwelling is legally existing. Staff finds that the available records, coupled with the development history and nonconforming certification of the surrounding properties, is enough to establish that the use has legally existed, that the applicant has supplied all available documentation to demonstrate continuous use, and thus should be certified as nonconforming.

CONCLUSION

Based on the evidence submitted by the applicant, it is reasonable to conclude that the multifamily building, 904 Fairview Avenue, was constructed in accordance with the requirements of the Zoning Ordinance in effect in 1951. There is also no evidence to suggest a lapse of continuous operation as a multifamily property since the building became nonconforming on January 1, 1964, when the text amendment to the Zoning Ordinance was enacted, which set forth a requirement for a minimum of 2,000 square feet of net lot area for each dwelling unit; therefore, establishing the nonconformity of this multifamily dwelling. Pursuant to Section 27-244, it is recommended that Certification of Nonconforming Use CNU-27104-2017, Brandon Investments, be APPROVED.