



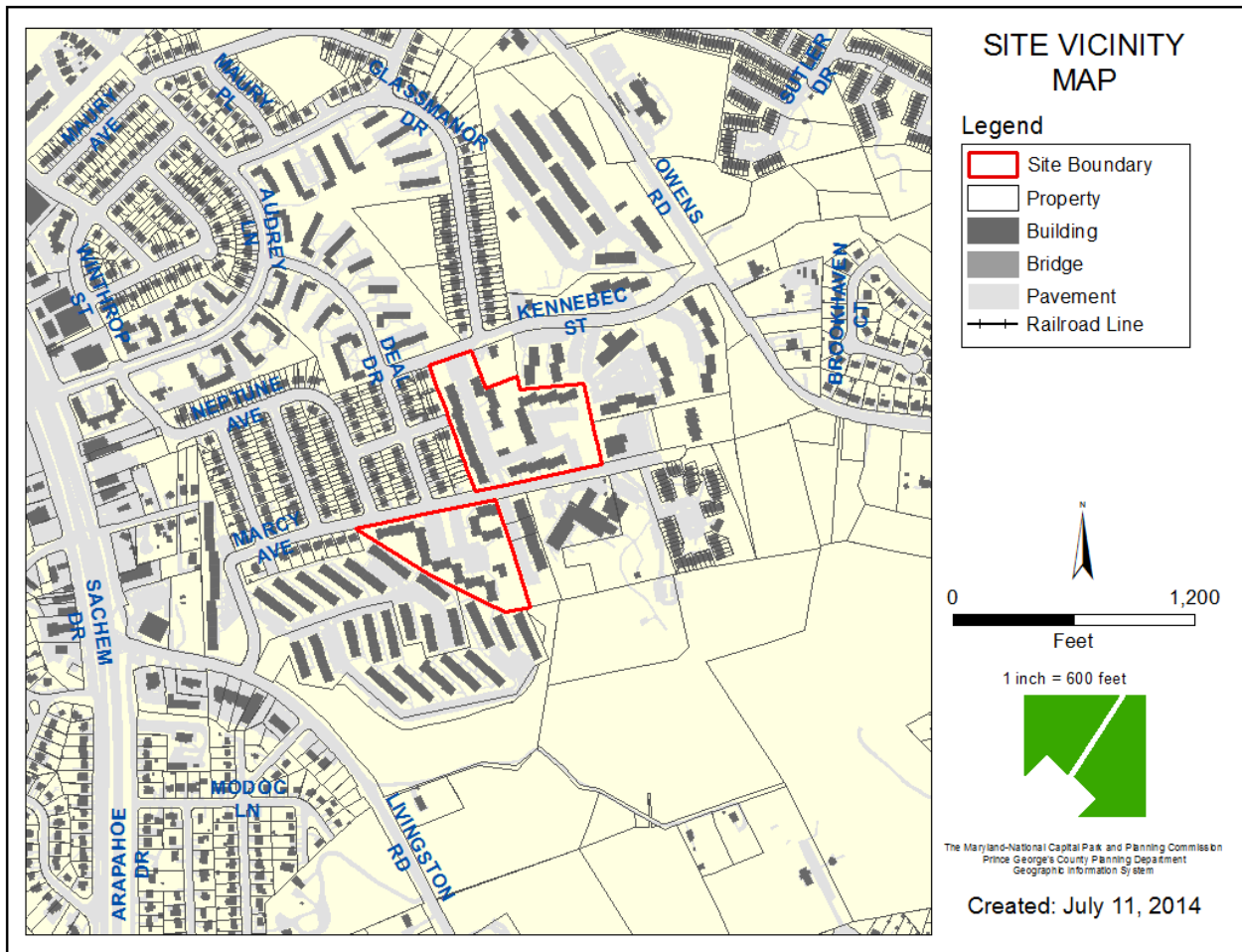
Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Certification of Nonconforming Use CNU-33101-13

| Application | General Data | |
|---|------------------------------|-----------------|
| Project Name: Colonial Village Apartments Location: On the north and south sides of Marcy Avenue and east of its intersection with Deal Drive. Applicant/Address: Colonial Village Apartments Limited Partnership 7007 Heatherhill Road Bethesda, MD 20817 Property Owner: Same as above | Planning Board Hearing Date: | 07/31/14 |
| | Staff Report Date: | 07/03/14 |
| | Date Accepted: | 05/14/14 |
| | Planning Board Action Limit: | N/A |
| | Plan Acreage: | 13.83 |
| | Zone: | R-18 |
| | Gross Floor Area: | 122,317 sq. ft. |
| | Lots: | N/A |
| | Parcels: | 1 |
| | Planning Area: | 76A |
| | Council District: | 08 |
| | Election District | 12 |
| | Municipality: | N/A |
| 200-Scale Base Map: | 207SE01 | |

| Purpose of Application | Notice Dates | |
|--|------------------------|----------|
| Certification of a nonconforming use for a 330-unit apartment building in the R-18 Zone. | Informational Mailing | 03/31/14 |
| | Acceptance Mailing: | 05/12/14 |
| | Sign Posting Deadline: | 07/02/14 |

| | | | |
|-----------------------------|---------------------------------|--|-------------------|
| Staff Recommendation | | Staff Reviewer: Taslima Alam Phone Number: 301-952-4976 E-mail: Taslima.Alam@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, Supervisor, Zoning Review Section, Development Review Division

FROM: Taslima Alam, Senior Planner, Zoning Review Section, Development Review Division

SUBJECT: **Certification of Nonconforming Use Application No. CNU-33101-13**

REQUEST: **Certification of a nonconforming use for a 330-unit apartment building in the R-18 Zone.**

RECOMMENDATION: APPROVAL

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of July 31, 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 known as Colonial Village Apartments is located on both sides of Marcy Avenue and east of its intersection with Deal Drive. The site is developed with multiple two- and three-story multifamily apartment buildings on the north side of Marcy Avenue with 198 dwelling units on 8.22 acres and 132 dwelling units on south side of Marcy Avenue on 5.62 acres of land for a total of 330 dwelling units. The site has existing parking lots on both sides of the development. Vehicular access to the development is via Marcy Avenue and Kennebec Street.

- B. **Development Data Summary:**

| | EXISTING | PROPOSED |
|--------------|--------------------------|-----------|
| Zone | R-18 | Unchanged |
| Acreage | 8.216 | Unchanged |
| Use(s) | Multifamily dwellings | Unchanged |
| Total Units | 330 | Unchanged |
| Site Density | 24.1 dwelling units/acre | Unchanged |
| Lot Coverage | 20.3% | Unchanged |

- C. **History:** The subject garden-style multifamily apartment complex was constructed in 1961/1962. The subject Colonial Village apartment is located on both sides of Marcy Avenue on Parcel A. One side of the development is located on the north side of Marcy Avenue and is named Glassmanor Knolls and other one is located in the south side of the Marcy Avenue and is named Edgewater Apartments. The entire apartment complex is comprised of 330 dwelling units. At the time of building construction, the property was zoned Multifamily Medium Density Residential (R-18) and the complex was in conformance with the regulations in effect. The development standards at that time permitted the allowable density based on 1,800 square feet of gross lot area per dwelling unit. The complex became nonconforming on January 1, 1964 when the Prince George's County Zoning Ordinance was amended to require a minimum of 2,000 square feet net lot area per dwelling unit in the R-18 Zone, which would only permit 179 units. The applicant applied for a Use and Occupancy Permit (33101-2013-U) which was put on hold until certification of the nonconforming use is approved by the Prince George's County Planning Board.
- D. **Master Plan Recommendation:** The 2014 *Approved Eastover/Forest Heights/Glassmanor Sector Plan and Sectional Map Amendment* retained the property in the R-18 Zone.
- E. **Request:** The applicant requests certification of the existing 330-unit apartment building that was constructed in 1961/1962. Because some development regulations in the R-18 Zone were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The existing apartment exceeds the current maximum density and bedroom percentage limits; as a result, a request for certification of nonconforming use approval is required.
- F. **Surrounding Uses:** The site is primarily surrounded by a mixture of multifamily apartment and single-family development, except for a fire department building along the east side of the Glassmanor Knolls development.

The site is surrounded by the following uses:

- North—** One-family detached residential and a multifamily apartment building in the R-18 Zone.
- South—** Multifamily residences known as Edgewater Apartments in the R-18 Zone. Immediately east of the multifamily development is vacant single-family residential land in the One-Family Detached Residential (R-55 Zone).
- East—** A multifamily apartment complex in the R-18 Zone. Immediately north is a volunteer fire and rescue department in the Multifamily Low Density Residential Condominium (R-30C) Zone.
- West—** Single-family triple-attached residential development in the One-Family Triple-Attached Residential (R-20) Zone.

- G. **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 it 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:

Section 27-244. Certification.

(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 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.

(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 statement of justification, the Colonial Village apartment complexes were constructed in 1961/1962. The apartments, in their present configuration, are clearly shown in the 1963 historic aerial photo of the site, which is the earliest photo available showing the building on the property. When the applicant applied for a use and occupancy permit in 2013, it was determined that certification of a nonconforming use is required because the apartments exceed the current maximum density and bedroom percentages for two- and three-bedroom units pursuant to Permit 11/270 and 271/61. 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. Numerous copies of Prince George's County Rental Housing License records from 1970 to 2015, which consistently shows 334 units. Prince George's County did not require rental licenses prior to 1970.
2. A letter dated March 27, 2014 from the Washington Suburban Sanitary Commission (WSSC) stating that the address had a WSSC account created in 1963. The present meter was installed on two separate dates for two different accounts, on April 10, 1989 and April 27, 1990. WSSC cannot provide any account data prior to 1999 due to archiving limitations. However, Ms. Reynolds (WSSC Correspondent Customer Relations Group), during a telephone conversation with staff on June 30, 2014, stated that she does not believe there was any service interruption for more than 180 calendar days since the creation of the accounts. No record was found to confirm her statement.
3. Letters from Mr. Simpson, Ms. Alice Battle, and Ms. Belinda, long time tenants who have resided in the Colonial Village apartments ranging from 10 to 34 years. These letters however do not testify any continuous use since 1964.

In addition, staff has reviewed a few different aerial photos of the site covering the period of time from 1963 to 2014. Each of these photos show the existing building located on the site in its present configuration as indicated on the site plan.

DISCUSSION

In staff's opinion, the above evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1961/1962. The nonconforming use began in January 1964 when the density regulations in the R-18 Zone were changed. The complex became further nonconforming when the R-18 Zone was amended in 1975 to allow a maximum of 12 units per acre. The allowable density on the subject site prior to January 1, 1964 was 334 units on a total of 13.84 acres. After that date, a maximum of 162 units would be allowed on a site that size.

CONCLUSION

Based on the evidence submitted by the applicant, together with 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 in effect prior to January 1, 1964. There is also no evidence to suggest a lapse of continuous apartment use since their construction. Therefore, it is recommended that Certification of Nonconforming Use Application No. CNU-33101-13 be **APPROVED** as a certified nonconforming use.