

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 a Nonconforming Use

CNU No. 35215/16-2005

Application	General Data
Project Name: Forest Creek Apartments Location: South side of Hil Mar Drive, east side of Walters Place, known as 6401 and 6501 Hil Mar Drive. Applicant/Address: MPI Forest Creek LLC; c/o Miles Properties, Inc. 3500 Lenox Road, Suite 800 Atlanta, GA 30326	Date Accepted: 12/22/05
	Planning Board Action Limit: N/A
	Plan Acreage: 38.4
	Zone: R-18
	Dwelling Units: 930
	Square Footage: N/A
	Planning Area: 75A
	Tier: Developed
	Council Districts: 6 & 7
	Municipality: N/A
	200-Scale Base Map: 205SE06

Purpose of Application	Notice Dates
Certification of nonconforming use for multifamily apartments, 930 units	Adjoining Property Owners Previous Parties of Record Registered Associations: (CB-12-2003)
	9/27/05
	Sign(s) Posted on Site and Notice of Hearing Mailed:
	1/23/06

Staff Recommendation		Staff Reviewer: Reggie Baxter	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

February 23, 2006

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Reggie Baxter, Planning Coordinator

SUBJECT: **Certified Nonconforming Use Applications (CNU No. 35215/16-2005)**

REQUEST: **Certification of Nonconforming Use for 930 Multifamily Apartment Units**

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 subject property is located approximately 600 feet west of Walters Lane along the south side of Hil Mar Drive, northwest of Walters Place, and west of the terminus of Wilkins Place. The site contains 38.4 acres and is developed with 930 garden apartments. There are 282 one-bedroom units, 469 two-bedroom units, and 179 three-bedroom units. The site also contains two swimming pools, two basketball courts, two playground areas, and 1,123 parking spaces, including 36 accessible spaces. A staffed guard booth is at both entrances off of Hil Mar Drive. Either six-foot high wrought iron or chain link fencing encloses the entire site. A PEPCO transmission line traverses the far western appendage of the property.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone(s)	R-18	R-18
Use(s)	3-story garden apartments	3-story garden apartments
Acreage	38.46	38.46

- C. **History:** The property was rezoned from the R-R (Rural-Residential) Zone to the R-18 (Multifamily, Low Density Residential) Zone on March 15, 1963, in Zoning Map Amendment A-4501, pursuant to Zoning Resolution No. 72-1963 (Exhibit 1). Special Exception No. 1040 was approved on May 15, 1964 (Resolution No. 214-1964), for construction of a community swimming pool (Exhibit 2).

The applicant has submitted several exhibits to demonstrate that the apartment complex was constructed pursuant to permits issued prior to January 1, 1964. The Permit Review staff (January 9, 2006, memorandum) indicates the apartment complex became nonconforming on January 1, 1964, when the Zoning Ordinance was amended to increase net lot area requirements to a minimum of 2,000 square feet per dwelling unit in the R-18 Zone (Exhibit 3). The increased lot area requirement only allows 837 dwelling units (1,675,000 square feet/2,000 square feet); 93 units less than developed under the 1963 requirement of 1,800 square feet. Therefore, the zoning standards applicable to the property would be those of the R-18 Zone as existed in 1963. The submitted exhibits are discussed in Section H below.

- D. **Master Plan Recommendation:** The 1985 approved Suitland-District Heights and vicinity master plan recommends multifamily development at urban densities for all but a small undevelopable appendage west of the PEPCO transmission line easement, which is recommended for high-suburban development. The 1986 sectional map amendment retained the entire property in the R-18 Zone. The southern portion of the property is shown within a perceptually sensitive area related to the noise control area for Andrews Air Force Base. However, the site is not in an aviation policy analysis zone. The 2002 General Plan shows the site in the Developed Tier.
- E. **Request:** The applicant requests certification of a 930-unit existing apartment complex. The development has 24.1 units per net acre (930 DUs/38.5 acres) and thus exceeds the current density limit of 12 units per net acre in the R-18 Zone by 93 apartment units. In addition, it does not conform to the current bedroom percentage regulations. Currently, a minimum of 40 percent of the units may be two bedrooms and ten percent may be three bedrooms. The property contains 50.4 percent two-bedroom units and 19.3 percent three-bedroom units. Bedroom unit percentages were not established until October 1, 1968.

F. Surrounding Uses:

North: Apartments in the R-18 Zone.

East: Single-family dwellings in the R-80 Zone.

South: Single-family dwellings in the R-80 and R-55 Zones.

West: Townhouses in the R-T 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 sets forth the following specific requirements for certifying a nonconforming use:

- (1)(a) 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) 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).**
- (1)(b) 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 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 of 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;**
 - (C) Specific data showing:**
 - (1) The exact nature, size, and location of the building, structure, and use;**
 - (2) A legal description of the property; and**
 - (3) 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.**

Comment: The applicant's site plan indicates the dimensions, size, location, limits of use for each building and property, and use of each existing building (Exhibit 4). The apartments are contained in 26 three-story brick buildings that cover 294,296 square feet of land. The property's legal description is "Parcel A in the Kensington subdivision recorded among the Land Records of Prince George's County on September 17, 1963 in Plat Book WWW49 Plat No. 05."

Analysis: According to the applicant, the apartments were originally constructed prior to January 1964 and the original permit records are no longer available. When the applicant applied for a use and occupancy permit on September 20, 2005 (Permit Numbers 35215/16), the Planning Information Services staff could not verify that the apartments were built in accordance with requirements in effect at the time of construction because original use and occupancy permits 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 and that it has been in continuous operation since that time. The applicant submitted the following documentary evidence in support of the application:

1. A September 2, 2005, letter from the Department of Environmental Resources (DER), (Exhibit 5), confirms that a prior use and occupancy permit cannot be located by DER as records before 1978 have been purged. However, DER records indicate valid rental licenses have been issued since 1978 and that apartment use has continued since construction in about 1965. The current rental license (valid until April 19, 2007) was issued by DER only after the property had passed a recent rigorous inspection. There is no evidence to suggest the use was ever discontinued.
2. Rental housing licenses and applications from 1978 to present.
3. August 31, 2005, letter from the Washington Suburban Sanitary Commission (WSSC) (Exhibit 6) confirms water and sewer services have been continuously in use and available to these properties since at least July 1, 1964 (WSSC accounts 0021212 and 0021089).
4. October 28, 1981, letter from the M-NCPPC Zoning Information and Permits Office indicating the project was in conformance with zoning when originally constructed (Exhibit 7).
5. A 1965 aerial photograph in the county's database shows apartments on the site (Exhibit 8).
6. The subdivision of the property was recorded on September 17, 1963 (Plat 49-05, Parcel A, Keystone Subdivision).
7. Site plans submitted with the application are dated November 19, 1963, December 1963, and January 1964. The December 1963 site plan contains approval stamps from WSSC (dated 5/20/1964) and from M-NCPPC (dated 5/22/1964).

Discussion: In reviewing the above evidence, staff concurs that the use has been in continuous operation since the use became nonconforming either by changes in net lot area density regulations on January 1, 1964, or changes in bedroom percentage regulations on October 1, 1968.

- H. **Other Requirements: Section 27-442** establishes current regulations for development in the R-18 Zone. However, the apartments were built under Section 17.0 of the 1963 County Code. The applicant and staff have reviewed the As-Built Site Plan (Exhibit 9) for conformance with the following relevant development standards contained in Section 17.0 of the 1963 County Code.

Bedroom percentages: Section 27 419 currently requires that the maximum percentages of two or more bedrooms per apartment unit in a separate building or project are 40 percent for two-bedrooms and ten percent for three or more bedrooms. The percentage limitations do not apply to efficiency and one-bedroom apartments. Bedroom percentages were not applicable when the apartments were built. However, the following table shows the current project bedroom percentages:

Project	No. of Units	Percent of Total
1 bedroom units	282	30.3%
2 bedroom units	469	50.4%
3 bedroom units	179	19.3%
Totals	930	100%

Section 17.1—Uses Permitted: Multiple family, low-density dwellings exist as permitted uses, including allowable accessory buildings (occupying no more than the floor area of one dwelling unit) such as the existing rental office located in one of the dwelling units.

Section 17.2—Area Requirements: Each multiple dwelling and accessory building shall be located on an interior lot having a net lot area of at least 5,500 square feet or on a corner lot having an area of at least 7,500 square feet, and there shall be at least 1,800 square feet of lot area per dwelling unit.

Section 17.211—Lots or parcels used for multiple-group dwellings shall have a net lot area of at least 20,000 square feet.

Comment: The property is 38.46 acres (1,675,406 square feet) that allows for 930 units at 1,800 square feet each.

Section 17.22—Lot Coverage Percentage: Buildings, including accessory buildings, may not cover more than 30 percent of the net lot area.

Comment: Existing buildings cover 294,296 square feet or 17.5 percent of the net lot area of 1,675,406 square feet.

Section 17.31—Building Lines Front: Each lot shall have a front building line at least 25 feet from, and parallel to, the front street line.

Comment: Buildings are set back 28 feet from Wilkins Place and more than 55 feet from the center line. Along Hil Mar Drive, the nearest building is 25 feet set back from the right-of-way.

Section 17.32—Building Lines Side: Each corner lot shall have a side building line at least

25 feet from, and parallel to, the side street line.

Comment: Along Walters Place, the closest building is set back 70 feet and more than 50 feet from the center line.

Section 17.41—Lot Width at Front Building Line: Each interior lot used for multiple dwellings shall have a width measured along the front building line at least 25 feet from, and parallel to, the side street line.

Comment: The front building line along Wilkins Place is over 500 feet and along Hil Mar Drive is over 400 feet.

Section 17.42—Lot Width at Front Street Line: Same as for Lot Width at Front Building Line.

Comment: See above.

Section 17.51—Yards, Front: Each lot shall have a front yard at least 25 feet in depth.

Comment: No apartment building is closer to Wilkins Place or Hil Mar Drive than 25 feet.

Section 17.52—Yards, Side: Each lot shall have two side yards, each being a minimum of ten feet. Each corner lot shall have a side yard along the street side at least 25 feet wide.

Comment: A side yard of approximately 18 feet exists along the east property line, 29 feet wide along the west and a setback of 70 feet from Walters Place. It appears Building 6401 is 12 feet from the west property line.

Section 17.53—Yards, Rear: Each lot shall have a rear yard at least 20 feet in depth.

Comment: The closest building from the south property line is 24 feet away. Along the north property line, adjacent to abutting Parcels 1 and 2 (Burgundy Park) the yard is 20 feet deep.

Section 17.615—Courts, Distance between Multiple-Group Dwellings: For buildings less than 40 feet in height, the distance between buildings having opposing walls shall be governed by the provisions for width of outer court, (Sections 17.611(a) and (b)). In other cases, except as provided in Sections 17.616 and 17.617, the minimum distance between buildings on the same lot shall be 20 feet.

Comment: The subject use meets this requirement. The nearest buildings are 24 feet apart (Buildings 6527 and 6529). Sections 17.611(a) and (b) require 40 feet and 24 feet respectively between opposing walls containing windows that provide over 25 percent of light and ventilation to living rooms or bedrooms.

Section 17.7—Automobile Parking Compound: One parking space per dwelling is required, with not more than 50 percent of the front/side yard used for such purposes. Spaces shall contain 200 square feet.

Comment: Current regulations require regular parking spaces to be 9½ feet x 19 feet in size. Parking requirements in 1963 required a minimum of 200 square feet each (either 10 feet x 20 feet or 9 feet x 22.25 feet). Parking regulations were amended in 1964 to allow a minimum size of

9 feet x 20 feet in the R-18 Zone. Therefore, it has been accepted that apartments constructed prior to 1964 could use the 9-foot x 20-foot parking space size. The applicant has elected to use the 9-foot x 20-foot standard.

The submitted site plan shows 930 (10 feet x 20 feet) parking spaces required (one per unit) and 990 provided. In addition, there are 36 (8 feet x 20 feet) handicapped accessible parking spaces provided and marked. The designated parking spaces cover 1,000 square feet of front yard, which is 22,524 square feet, and 3,000 square feet of rear yard, which is 46,643 square feet. This equates to less than 50 percent of the yard area.

Section 17.8—Building Floor Area: The total floor area of all buildings and accessory buildings shall not exceed nine-tenths (0.9) times the net area of the lot.

Comment: Permitted floor area totals 1,507,785 square feet and the project includes 875,133 square feet of floor area, or a 0.58 FAR.

Section 17.9—Building Heights: Main buildings may not exceed three (3) stories, but not over 40 feet; accessory buildings shall not exceed 15 feet in height.

Comment: All apartment buildings are three stories and do not exceed 34.3 feet in height. Accessory buildings do not exceed 15 feet in height.

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 before January 1, 1964. There is also no evidence to suggest a lapse of continuous apartment use since construction. Therefore, it is recommended that Application Numbers CNU-35215/16-2005 be APPROVED as a certified nonconforming use.