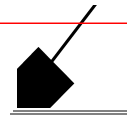


Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530



Comment [COMMENT1]: WHEN INSERTING
 INFORMATION AT THE @ SIGN
 REMEMBER TO USE INDENT FOR SECOND
 LINE - NOT TAB. ALSO, IT WILL LOOK
 LIKE THE TEXT IS GOING WACKO, BUT
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Note: Staff reports can be accessed at www.mnccppc.org/pgco/planning/plan.htm

CERTIFICATION OF NONCONFORMING USE #35665-2001-U

Application	General Data
Project Name	Date Accepted 02/12/2002
Marlow Heights Apartments	Planning Board Action Limit N/A
Location	Tax Map & Grid 088 B-3
Southwest corner of St. Clair Drive and 28 th Avenue, known as 4215 28 th Avenue.	Plan Acreage 5.36
Applicant	Zone R-10 and R-55
MHA Associates Limited Partnership c/o The Stephen A. Goldberg Company 1615 M Street, NW, Suite 850 Washington, DC 20036	Dwelling Units 172
	Square Footage N/A
	Planning Area 76A
	Council District 07
	Municipality None
	200-Scale Base Map 206SE3

Purpose of Application	Notice Dates
Certification of a nonconforming use for a 172-unit apartment complex	Adjoining Property Owners (CB-15-1998) N/A
	Previous Parties of Record (CB-13-1997) None
	Sign(s) Posted on Site 6/21/02
	Variance(s): Adjoining Property Owners None
Staff Recommendation	Staff Reviewer: Catherine H. Wallace
APPROVAL	APPROVAL WITH CONDITIONS
DISAPPROVAL	DISCUSSION

X			
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July 17, 2002

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Catherine H. Wallace, Planner Coordinator

SUBJECT: **Certified Nonconforming Use Application No. 35665-2001-U**

REQUEST: **Certification of a Nonconforming 172-Unit Apartment Complex**

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 at the southwest corner of St. Clair Drive and 28th Street. It is a five-acre site developed with six multistory apartment buildings and associated parking.
- B. History: The subject property was developed with the Marlow Heights Apartments (172 dwelling units) in 1959. On October 1, 1968, the District Council enacted legislation regulating bedroom percentages in the R-10 Zone. These requirements limit the number of two-bedroom apartments to 40 percent and the number of three-bedroom apartments to ten percent. The complex meets the three-bedroom limit, but exceeds the two-bedroom limit. A maximum of 68 two-bedroom units would be permitted and the Marlow Heights Apartments complex includes 86.
- C. Master Plan Recommendation: The Subregion VII Master Plan (1984) recommends residential land uses with urban densities (12.0-16.9 dwellings/acre) for the subject site.
- D. Request: The application requests certification as a nonconforming use of the 172-dwelling unit apartment complex, as it was constructed and as it exists today, with a bedroom breakdown of 78 one-bedroom, 86 two-bedroom, and 8 three-bedroom apartments.
- E. Surrounding Uses: The apartment complex is surrounded by the following uses:
- Northeast - Marlow Heights Shopping Center in the C-S-C Zone
 - Southeast - Single-family detached dwellings in the R-55 Zone
 - Southwest - Benjamin Stoddert Middle School in the R-55 Zone
 - Northeast - Single-family detached dwellings in the R-55 Zone
- F. Certification Requirements: Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning 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 specific requirements:
1. **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) certifies that the use is really nonconforming and not an illegal use.**
 2. **Application for Use and Occupancy Permit:**
 - a. **The applicant shall file for a use and occupancy permit.**
 - b. **Along with the application and accompanying plans, the applicant shall provide the following:**

- (1) **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.**
- (2) **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.**
- (3) **Specific data showing:**
 - (i) **The exact nature, size and location of the building, structure and use.**
 - (ii) **A legal description of the property.**
 - (iii) **The precise location and limits of the use on the property and within any building it occupies.**
 - (iv) **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.**

G. Documentary Evidence: There is no copy available of a use and occupancy permit issued for the use prior to the date it became nonconforming. Therefore, the Planning Board must determine whether in fact the use was legally established prior to the date it became nonconforming and has been in continuous operation since that time.

The applicants have submitted several forms of documentary evidence to show that the use both predates the 1968 change in regulations regarding bedroom percentages, and has continued unchanged since that time. The evidence includes:

1. A copy of a 1968 aerial photo obtained from the M-NCPPC Information Management Division showing the apartment buildings and associated parking areas;
2. A letter dated May 15, 2000, from the Washington Suburban Sanitary Commission indicating that service has been provided to this location continuously since August 1, 1959;
3. A letter dated June 6, 2000, from the Washington Gas Company indicating that service has been provided to 4223 28th Avenue continuously since 1980;
4. Affidavits from two long-time residents of the complex who indicate that the apartment complex has been continuously maintained and operated since 1959 and 1963, respectively; and

5. A 1999 application for an apartment license indicating the bedroom percentages for the complex.
6. A May 26, 2000, letter from Willie Furr, DER Community Standards Division, that the Marlow Heights Apartments have been continuously licensed as an apartment complex since 1970.

CONCLUSION:

Based on the preponderance of the above listed evidence, the apartment complex has existed without interruption in its present configuration since prior to 1968, when the use became nonconforming. It is recommended that CNU-35665 be APPROVED as requested.