



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

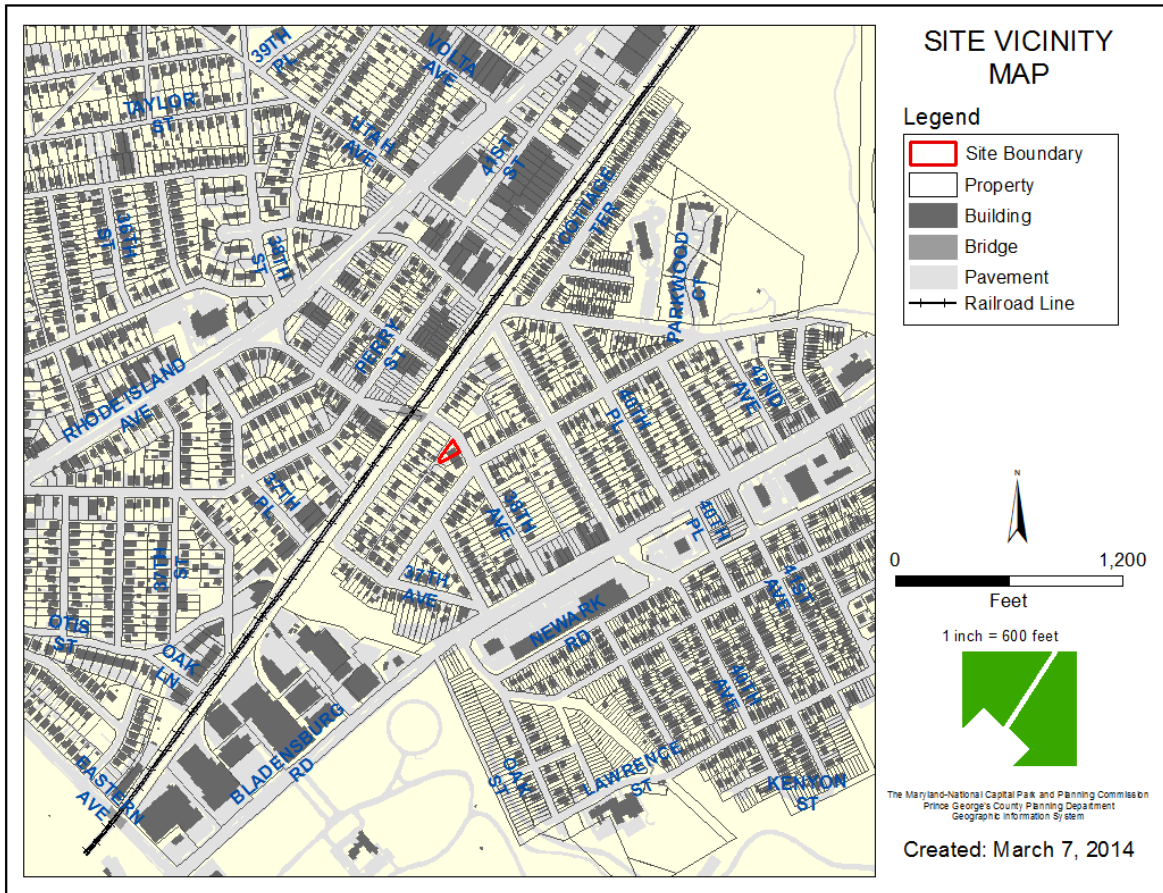
## Certification of Nonconforming Use

**CNU-44622-2013**

| Application                                                                                                                                                                                                                                                                                                                          | General Data                 |              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------|
| <b>Project Name:</b><br>3804 38 <sup>th</sup> Avenue<br><br><b>Location:</b><br>West side of 38 <sup>th</sup> Avenue Approximately 830 feet north of Bladensburg Road.<br><br><b>Applicant/Address:</b><br>Delia Allanigue<br>3804 38 <sup>th</sup> Avenue<br>Brentwood, MD 20722<br><br><b>Property Owner:</b><br>Same as applicant | Planning Board Hearing Date: | 10/30/14     |
|                                                                                                                                                                                                                                                                                                                                      | Staff Report Date:           | 10/10/14     |
|                                                                                                                                                                                                                                                                                                                                      | Date Accepted:               | 08/11/14     |
|                                                                                                                                                                                                                                                                                                                                      | Planning Board Action Limit: | N/A          |
|                                                                                                                                                                                                                                                                                                                                      | Plan Acreage:                | 0.13 acres   |
|                                                                                                                                                                                                                                                                                                                                      | Zone:                        | R-18         |
|                                                                                                                                                                                                                                                                                                                                      | Gross Floor Area:            | N/A          |
|                                                                                                                                                                                                                                                                                                                                      | Lots:                        | 1            |
|                                                                                                                                                                                                                                                                                                                                      | Parcels:                     | N/A          |
|                                                                                                                                                                                                                                                                                                                                      | Planning Area:               | 68           |
|                                                                                                                                                                                                                                                                                                                                      | Tier:                        | Developed    |
|                                                                                                                                                                                                                                                                                                                                      | Council District:            | 05           |
|                                                                                                                                                                                                                                                                                                                                      | Election District:           | 02           |
|                                                                                                                                                                                                                                                                                                                                      | Municipality:                | Cottage City |
| 200-Scale Base Map:                                                                                                                                                                                                                                                                                                                  | 205NE03                      |              |

| Purpose of Application                                                                  | Notice Dates           |          |
|-----------------------------------------------------------------------------------------|------------------------|----------|
| Certification of Nonconforming Use for a four-unit apartment building in the R-18 Zone. | Informational Mailing  | 03/14/14 |
|                                                                                         | Acceptance Mailing:    | 08/08/14 |
|                                                                                         | Sign Posting Deadline: | 09/30/14 |

|                             |                                 |                                                                                                                        |                   |
|-----------------------------|---------------------------------|------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Staff Recommendation</b> |                                 | <b>Staff Reviewer:</b> Taslima Alam<br><b>Phone Number:</b> 301-952-4976<br><b>E-mail:</b> Taslima.Alam@ppd.mncppc.org |                   |
| <b>APPROVAL</b>             | <b>APPROVAL WITH CONDITIONS</b> | <b>DISAPPROVAL</b>                                                                                                     | <b>DISCUSSION</b> |
| 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-44622-13**

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

RECOMMENDATION: **APPROVAL**

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NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of October 30, 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.

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## FINDINGS

- A. **Location and Field Inspection:** The subject property is located on the west side of 38<sup>th</sup> Avenue approximately 830 feet north of Bladensburg Road. The site is developed with a two story, apartment building with basement on a 5,648-square-foot lot. The proposed apartment adjoins two other apartment buildings to the south. There is no designated parking available on the site. However, some street parking is available on Parkwood Street located to the south of the subject site. The site has an existing brick and concrete patio in the back yard of the apartment and a wooden split rail fence along the north side of the property. The site has frontage on 38<sup>th</sup> Avenue and a 15-foot-wide private alley to the north. Access to the site is via a 25-foot long concrete walkway from 38<sup>th</sup> Avenue.

- B. **Development Data Summary:**

|              | EXISTING                 | PROPOSED  |
|--------------|--------------------------|-----------|
| Zone         | R-18                     | Unchanged |
| Acreage      | 0.130                    | Unchanged |
| Use(s)       | Multifamily dwellings    | Unchanged |
| Total Units  | 4                        | Unchanged |
| Site Density | 30.8 dwelling units/acre | Unchanged |
| Lot Coverage | 29.2%                    | Unchanged |

- C. **History:** The site was recorded as Lot 44, Block 3, of Cottage City in April 1936. The subject apartment building was constructed in 1936. At the time of the building construction, the property was zoned Residential “C” and was in conformance with the regulations in effect. The development standards at that time permitted the allowable density based on 625-square-foot lot area per dwelling unit for four-unit apartment building. The use became nonconforming in November 29, 1949, when the property was placed in the Multifamily Medium-Density Residential (R-18) Zone. Since then, the density changed from minimum 625-square-foot lot area per dwelling unit to a minimum of 1,800-square-foot net lot area per dwelling unit thus allowing three (3) dwelling units. The site plan includes a table that indicates the Zoning Ordinance requirements of the “Residence C” Zone classification which were in place at the time the apartment building was constructed, current R-18 Zoning Ordinance requirements, and where the use conforms to or deviates from those requirements. The use does not meet the current R-18 zone density requirements. The applicant applied for a Use and Occupancy Permit (15315-2013) which was put on hold because there is no prior use and occupancy permit; therefore, certification of nonconforming use must be approved by the Prince Georges County Planning Board.
- D. **Master Plan Recommendation:** The 1994 *Approved Master Plan and Sectional Map Amendment* for Planning Area 68 retained the subject property in the R-18 (Multifamily Medium-Density Residential) Zone.
- E. **Request:** The applicant requests certification of an existing, four-unit apartment building that was constructed in 1936. At that time, the property was subject to the requirements of the Residential “C” Zone classification. Because development regulations were changed or adopted after the use was lawfully established, the apartment use became nonconforming. Based on the current standard of square footage per dwelling unit for the R-18 Zone, the existing subject use exceeds the current maximum density; as a result, a request for certification of nonconforming use approval is required.

- F. **Surrounding Uses:** The site is primarily surrounded by single-family residential development in the R-55 Zone except the three contiguous apartment buildings attached to the subject apartment compound to the south and another adjacent apartment building to the southwest.

The site is surrounded by the following uses:

- North—** Across the 15-foot private alley is single-family detached development, in the R-55 Zone.
- South—** Contiguous to the subject building is multifamily apartment building in the R-18 Zone.
- East—** Thirty-eighth Avenue Right-of-Way and across the right-of-way is a vacant Cottage City fire department and other single-family detached development in the R-55 Zone.
- West—** Multifamily apartment building in the R-18 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 applicant’s documentation, this apartment building was constructed in 1936. When the applicant applied for a use and occupancy permit in January 2014, it was determined that certification of nonconforming use is required because the apartment exceeds the current maximum density. The property standards division could not verify that the apartments were built in accordance with requirements in effect at the time of construction because original use and occupancy permit records were not available. 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. A notarized letter from Ms. Delia Allanigue (owner) dated October 1, 2014 stating that she has owned the subject apartment building since January 2000. It has never ceased operation as a multifamily dwelling for more than 180 calendar days.
2. A notarized letter dated June 13, 2014, from Mr. George Anderson, a long time neighbor of Ms. Delia Allanigue (owner), lives in 3716 38<sup>th</sup> Avenue, attesting that the subject four-unit multifamily one-bedroom apartment building was constructed in 1936 and that Mr. Anderson has been living in the neighborhood since the first brick was laid on it. He further states that apartments never ceased operation for more than 180 consecutive calendar days since it was built.
3. A Maryland Department of Assessments and Taxation record indicating the structure was built in 1936. Attached is a printout showing payment of property taxes at that address covering the time period from 1999–2014.
4. Prince George’s County Rental License applications from 1998–2016 which consistently show four apartments on the property. However, the rental license issued for the year 2014–2016, shows license for three apartments units instead of four because the owner is currently living in one of the four units and therefore, does not require a rental permit. According to an e-mail dated October 8, 2014, from Mr. Timothy Holden, Senior Inspector of Prince Georges County Department of Permitting, Inspections and Enforcement (DPIE) Section, no other license could be located for this property prior to 1998 because the case file for this property was lost and a new case file was created in 1998.
5. A letter dated May 9, 2014 from the Washington Suburban Sanitary Commission

(WSSC) stating that the address has had an active WSSC service since April 1, 1955. The computerized record shows that the water and sewer services have been in use and available to this property since at least April 7, 1995. Due to archiving limitations, billing information prior to that date is not available, but they noted that there has been no service interruption for more than 180 days.

6. October 2014, a site plan of the subject property was submitted that contains a comparison of the regulations in effect when the apartments were built to current regulations. The site plan shows building locations, setbacks, and pedestrian connections.

In addition, staff has reviewed different aerial photos of the site covering the period of time from 1938 to 2014. Each of these photos shows the location of the existing building on the site in its present configuration.

## DISCUSSION

In staff's opinion, the above evidence supports the applicant's claim that the subject multifamily dwelling has been in continuous operation since its construction in 1936. The nonconforming use began in November 1949 when the density regulations in the Residential "C" changed from a minimum 625-square-foot lot area per dwelling unit to a minimum of 1,800-square-foot lot area per dwelling unit in the current R-18 Zone. The allowable density on the subject site prior to November 29, 1949 was four (4) units on a total a 0.130 acre. After that date, a maximum of three units would be allowed on a site at 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 apartment building was constructed in accordance with the requirements of the Zoning Ordinance in effect prior to November 29, 1949. 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-44622-13 be APPROVED as a certified nonconforming use.