

Certification of Nonconforming Use NO.-7563-99-U

Application	General Data
Project Name: Parkview Manor Apartments Location: west side of 38 th Avenue, 200 ±feet south of the intersection with Hamilton Street Applicant/Property Address: Parkview Manor Limited Partnership 5032 38 th Ave. Hyattsville, MD 20782 Correspondent: Michael S. Nagy, Esq. Margolius, Mallios, Davis, Rider & Tomar, LLP 9200 Basil Court Largo, MD 20774	Date Accepted: 12-7-00
	Planning Board Action Limit: N/A
	ZHE Hearing Date: N/A
	Plan Acreage: 65,000 sq.ft.
	Zone: R-18
	Dwelling Units: 53 d.u.
	Square Footage:
	Planning Area: 68
	Council District: 2
	Municipality: City of Hyattsville
200-Scale Base Map: 206 NE 3	

Purpose of Application	Notice Dates
Certify existing apartment complex	Adjoining Property Owners: N/A (CB-15-1998)
	Previous Parties of Record: N/A (CB-13-1997)
	Sign(s) Posted on Site: 11-17-00
	Variance(s): Adjoining: N/A Property Owners

Staff Recommendation		Staff Reviewer: Jimi Jones	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

December 13, 2000

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Jimi Jones, Planning Coordinator

SUBJECT: **Certified Nonconforming Use Application No. 7563-99-U**

REQUEST: **Certification of a Nonconforming Apartment Building**

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.

CNU-7563-99-U

FINDINGS:

- A. Location and Field Inspection: The subject 65,000-square-foot property is a rectangular property located on the west side of 38th Avenue, 200 ± feet south of the intersection with Hamilton Street, in Hyattsville. The street address is 5030-5044 38th Avenue. The property is developed with four, three-story freestanding apartment buildings containing a total of 53 units. These buildings are connected by brick breeze ways, centered along the north-south axis of the property. The buildings' main entrances face 38th Avenue, and the front yards are improved with pedestrian-oriented, landscaped courtyards. The complex's 48 parking spaces are located behind the buildings and are accessible from a public alley located contiguous and parallel to the northern property line.
- B. History: The subject garden apartments were constructed and first occupied in 1948. When the property was re-zoned from Residential ■C• to ■R-18• on November 29, 1949, the buildings became nonconforming, due to the decreased allowable density of the R-18 Zone. The buildings also exceed the current maximum percentage of two bedroom units of 50 percent, (29 of the 53 units or approximately 54.7 percent are two bedroom units).
- C. Master Plan Recommendation: The Adopted and Approved Master Plan and Sectional Map Amendment for Planning Area 68, recommends multifamily residential use for the subject property (May 1994). The Plan's description of the existing multifamily development in Hyattsville's residential neighborhoods apply to the subject property. The Plan notes that the existing apartments are generally well maintained, and that the complexes are located in clusters along major roadways.
- D. Request: The applicant wishes to certify the existing apartment complex as a nonconforming use. The property became nonconforming on November 29, 1949 when it was re-zoned from Residential ■C• to ■R-18•. The maximum density for the Residential ■C• Zone was 625 square feet gross lot area per family. The maximum density for the R-18 Zone in 1949 was 1,800 square feet of net lot area per dwelling unit. The current maximum density is 12 dwelling units per acre. The total net lot area of the property is 65,000 square feet. The density requirement for the Residential ■C• Zone permitted 53 dwelling units on the property. The current density requirements for the R-18 Zone would only allow 18 dwelling units. The buildings also exceed the current permitted maximum percentage of two-bedroom units of 50 percent. There are 29, two bedroom units out of the 53 total units or approximately 54.7 percent.
- E. Surrounding Uses:

The property is surrounded by the following uses:

North : Immediately contiguous is a 25' wide unnamed public alley. Across the alley and fronting onto Hamilton Street is a convenience store in the C-S-C Zone.

South : Single family residences located in the R-55/I-D-O (Intense Development Overlay) Zone.

East and West: Single-family residences located 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.**
 - (4) **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: The applicant has submitted the following documentary evidence in support of the nonconforming use application:

- Ex. 1. Boundary Survey, prepared September 1997, by Central Maryland Surveyors, Inc., Scale 1"=50'.
- Ex. 2. Deed (Liber 11786, folio 203) transferring the property from Jasper Agusta to Parkview-Manor Limited Partnership, November 17, 1997.
- Ex. 3. SDAT Real Property Search-Individual Report showing the use's commencement date of 1948.
- Ex. 4. Deed referencing the will of Earnest Aiken transferring property to Jesse E. Aiken, December 27, 1973.
- Ex. 5. Deed transfer from Jesse E. Aiken to himself and Benjamin Aiken for AIKEN FOUR PROPERTIES, December 27, 1973.
- Ex. 6. Quit claim deed, 1992, from Roswitha S. Augustus to Joseph H. Augustus, October 29, 1992.
- Ex. 7. Apartment licenses issued continuously from 1970 to 2000.

CONCLUSION:

The proposal to certify the existing Parkview Manor Apartments as a nonconforming use will not impair the integrity of the Zoning Ordinance, the 1994 Approved Master Plan and Sectional Map Amendment for Planning Area 68 or any other relevant planning documents. The Applicant has applied for a use and occupancy permit, submitted the necessary evidence showing the commencing date and continuous use of 53 apartments from the date of construction to the present. Staff therefore recommends APPROVAL of CNU-7563-99-U.