

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-2737-2006 requesting certification of a nonconforming apartment complex in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on September 21, 2006, the Prince George's County Planning Board finds:

A. Location and Field Inspection: The subject property has 843 feet of frontage along the west side of New Hampshire Avenue, opposite Metzert Road, and to the north and south of Southampton Drive. The site is developed with the three-story Northwest Park Apartment complex located within both Prince George's and Montgomery Counties. The portion of the complex in Prince George's County comprises 7.11 acres, containing nine apartment buildings in their entirety, and small portions of four other buildings primarily located in Montgomery County. The subject property contains 81 multifamily units on the 3.66 acres north of Northampton Drive (Block 1). There are 48 units on the 3.44 acres located south of Northampton Drive (Block 2).

B. Development Data Summary

	EXISTING	PROPOSED
Zone	R-18	Unchanged
Acreage	7.11 total	Unchanged
Block 1	3.66	Unchanged
Block 2	3.44	Unchanged
Use(s)	3-story apartments (129 units)	Unchanged
Block 1	81 dwellings	Unchanged
Block 2	48 dwellings	Unchanged
Site Density	18.14	Unchanged
Block 1	22.09	Unchanged
Block 2	13.94	Unchanged
Bedroom Percentages		
1BR	27 (20.93%)	Unchanged
2 BR and 2 BR duplex	84 (65.12%)	Unchanged
3 BR	18 (13.95%)	Unchanged
Total Units	129	Unchanged
Lot Coverage		
Block 1	22.34%	Unchanged
Block 2	20.02%	Unchanged

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C. History: The property was rezoned from Residential A to Residential C by Zoning Map Amendment (ZMA) No. A-1099 on July 8, 1948. Conditions were imposed requiring a building line 100 feet west of and parallel to New Hampshire Avenue and requiring development in accordance with the R-18 Zone provisions, which were pending adoption at the time of the ZMA. The R-18 was adopted by the County on November 29, 1949. There is evidence indicating that Block 1 of the subject property was built in 1949 in accordance with the new R-18 Zone regulations. Block 2 was built in 1962 according to the Maryland Department of Assessments and Taxation Records. A final plat of subdivision was approved for the property on July 8, 1948 (Plat Book 15, Folio 52).

The applicant applied for a use and occupancy permit (2737-2006-00) on January 23, 2006 and was denied because no prior use and occupancy permits for the property could be found. The complex became nonconforming on January 1, 1964, when the Zoning Ordinance was amended to increase the minimum net lot area per dwelling unit from 1,800 to 2,000 square feet in the R-18 Zone. Also, bedroom percentages were not established until October 1, 1968, which again made the use nonconforming.

D. Master Plan Recommendation: The October 1989 *Approved Master Plan for Langley Park-College Park-Greenbelt* recommends multifamily development at urban densities. The May 1990 Sectional Map Amendment retained the property in the R-18 Zone. The 2002 *General Plan* shows the property in the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit supporting, mixed-use pedestrian-oriented, medium-to high-density neighborhoods.

E. Request: The applicant requests certification of a 129-unit existing apartment complex that was built in 1949 and 1962 pursuant to regulations in the R-18 Zone. 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 nonconforming status began on January 1, 1964, when the Zoning Ordinance was amended to increase the minimum net lot area per dwelling unit from 1,800 square feet to 2,000 square feet per dwelling unit. Based on the current standard of square footage per dwelling unit, only 79 units would have been allowed on Block 1. Block 1 of the apartment complex, however, has 81 dwelling units. The complex again became nonconforming on October 1, 1968 when regulations were established limiting the percentages of two or more bedrooms. The table in Section B above indicates the number of bedroom units existing.

F. Surrounding Uses:
The site is surrounded by the following uses:

North: The Northwest Park Apartments across the Montgomery County boundary; Broadacres Elementary School, the Hampshire West Apartments in the R-18 Zone; a Pizza Hut and 7-11 convenience store.

East: Across New Hampshire Avenue is the St. Luke's Institute in the R-R Zone and the Presidential Condominiums complex in the R-18 Zone.

South: Undeveloped wooded land and Paint Branch Parkway in the R-O-S Zone.

West: The Northwest Park Apartments across the Montgomery County boundary and M-NCPPC parkland (Northwest Branch Parkway).

- 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:

- (a)(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) or the District Council certifies that the use is nonconforming and not illegal.**
- (b)(1) The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.**
- (b)(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:**
 - (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.**

Analysis: According to the applicant, the apartments were constructed in 1949 and 1962 and the original permit records are no longer available. When the applicant applied for a use and occupancy permit on January 23, 2006 (Permit No. 2737-2006-00), the Planning Information Services staff could not verify that 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. Maryland Department of Assessments and Taxation real property data search that identifies the subject development as built in 1949 and 1962 (Exhibit 1).
2. March 15, 2006 letter from the Washington Suburban Sanitary Commission (WSSC) indicating that the subject property has been serviced with water and sewer continuously since at least October 1, 1950 (Exhibit 2).
3. February 15, 2006 letter from the Department of Environmental Resources (DER) Community Standards Division, indicating that the subject property has been continuously licensed as an apartment complex since 1975 (Exhibit 3). No records are available before that date. Parenthetically, the letter indicates that there are no outstanding violations of the County Housing Code.
4. Annual financial reports from Northwest Park Associates, Limited Partnership from 1976 through 2003 showing income, expenses and vacancy rates. The records demonstrate continuous operation and occupancy.
5. A June 8, 2006 site plan of the subject property was submitted that contains a comparison of the existing apartment complex to the R-18 Zone regulations in effect when the apartments were built. The tables also indicate the degree of nonconformity created when the net lot area regulations changed and bedroom unit percentages were adopted. The site plan shows building locations, setbacks, parking and pedestrian connections (Exhibit 4).

Discussion: In the Planning Board's opinion, the above evidence supports the applicant's claim that the apartment complex has been in continuous operation since constructed in 1949 and 1962. The nonconforming use began on January 1, 1964 when net lot area per dwelling unit was changed from 1,800 square feet per unit (allowing 81 existing units in Block 1), to 2,000 square feet per unit (allowing 79 units in Block 1). When bedroom unit percentages were adopted on October 1, 1968, the percentages built (see Section B above) exceeded the allowable percentage (not more than 10 percent of the units can have three or more bedrooms, and not more than 40 percent can be two-bedroom units).

Tables contained on the site plan, comparing the development to the 1948 standards under which the complex was constructed and the R-18 Zone regulations as of 2003, indicate that two apartment buildings encroach into the required 20-foot building setback along New Hampshire

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Avenue by one and four feet respectively. The applicant indicates a variance will be sought, if necessary, to rectify this as built situation.

CONCLUSION:

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject apartments were constructed in accordance with the requirements of the Zoning Ordinance in effect in 1949 and 1962. There is also no evidence to suggest a lapse of continuous apartment use since construction.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and recommends APPROVAL of the above-noted application.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Eley, seconded by Commissioner Vaughns, with Commissioners Eley, Vaughns, Squire, and Parker voting in favor of the motion, and with Commissioner Clark absent at its regular meeting held on Thursday, September 21, 2006, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 19th day of October 2006.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator