



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 16-39

14741 Governor Oden Bowie Drive
 Upper Marlboro, Maryland 20772
 TTY: (301) 952-4366
 www.mncppc.org/pgco
 File No. CNU-55018-2015

RESOLUTION

WHEREAS, the Prince George’s County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-55018-2015 requesting certification of a nonconforming use for a six-unit apartment building in the R-18 Zone 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 March 10, 2016, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 6802 Red Top Road, is located in the northwest quadrant of the intersection of Red Top Road and Fairview Avenue. The site is developed with a two-story, brick, garden-style, six-unit apartment building. Access to the property is off of Red Top Road. Off-street parking is available for the subject property. Prince George’s County District Council Resolution 82-1970 waived the off-street parking requirements for this property, in addition to the other apartment buildings in the Hampshire View Subdivision, because a portion of the parking spaces extend beyond the property onto Red Top Road.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	0.166	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	6	Unchanged
Site Density	36.14 dwelling units/acre	Unchanged
Lot Coverage	26.59 %	Unchanged

C. **History:** The subject property was placed in the “A” Residential Zone when it was first included in the Maryland-Washington Regional District (Regional District) in 1928. The site was recorded as Lot 8, Block 3, of Hampshire View in November 1947. The Prince George’s County Zoning Ordinance was amended in 1949, at which time the subject property was placed in the “C” Residential Zone. The subject apartments were constructed in 1949 in accordance with the 1942 requirements still in place. On November 29, 1949, when the comprehensive zoning of the County took place, the property was placed in the new Multifamily Medium Density Residential (R-18) Zone. The 1942 development standards at that time permitted the allowable density based on 625 square feet of gross lot area per dwelling unit, which would permit six units. The complex became nonconforming on November 29, 1949 when the Zoning Ordinance was amended to require a minimum of 1,800 square feet net lot area per dwelling unit in the R-18 Zone, which would only permit four units. The applicant applied for a use and occupancy permit (U&O)

because no prior U&O permits for the property could be located; therefore, a public hearing before the Prince George's County Planning Board is required.

The subject apartments were constructed in 1949. All of the units are one-bedroom. The development standards at that time permitted the allowable density based on 625 square feet of gross lot area per dwelling unit, which permitted up to 11 units on the 7,232-square-foot lot. The current R-18 Zone requirements only permit three units. The applicant applied for a U&O permit and was denied because no U&O permits for the property could be found; therefore, a public hearing before the Planning Board is required.

D. **Master Plan Recommendation:** The 1989 Approved Master Plan for Langley Park-College Park-Greenbelt and Vicinity and the 1990 Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67 (Langley Park-College Park-Greenbelt and Vicinity Master Plan and SMA) recommends multifamily development at an urban density. The SMA retained the property in the R-18 Zone. The vision for this area in the *Plan Prince George's 2035 Approved General Plan* (Plan Prince George's 2035) is for a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.

E. **Surrounding Uses:** The site is surrounded by similar garden-style apartment buildings in the R-18 Zone.

North, South, East and West— Developed property with multifamily apartment buildings zoned R-18.

F. **Request:** The applicant requests certification of an existing six-unit apartment building that was permitted and built in 1949. 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 commenced January 1, 1964 when the Zoning Ordinance was amended to increase the original minimum net lot area per dwelling unit from 1,800 to 2,000 square feet of gross lot area per dwelling unit.

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—Per the Maryland State Department of Assessments and Taxation (SDAT) database, the apartments were constructed in 1949. When the applicant applied for a U&O permit, the Permit Review Section could not verify that the apartments were built in accordance with requirements in effect at the time of construction because original U&O 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 letter dated January 14, 2009 from the Washington Suburban Sanitary Commission (WSSC) stating that the address activated a WSSC account on August 1, 1949. The meter was installed on November 6, 1974. Water and sewage services have been continuously in use and available to the property since at least March 17, 1999. WSSC noted that there has been no service interruption since 1999.
2. A Maryland-National Capital Park and Planning Commission—Prince George’s County building permit for an oil burner issued on October 20, 1949 for 6802 Red Top Road.
3. A Certificate of Boiler or Pressure Vessel Inspection dated December 17, 2008, and expiring December 17, 2010, issued by the State of Maryland Department of Labor, Licensing and Regulation.
4. Prince George’s County Department of Environmental Resources Multifamily Rental Licenses for 6802 Red Top Road for the years 1970 through 2009 which consistently notes six apartments on the property. Prince George’s County did not require rental licenses prior to 1970.
5. Aerial photos of the site covering the period of time from 1965, 1977, 1980, 1984, 1993, 1998, 2000, 2005, 2009, and 2014. Each of these photos shows the existing building located on the site in its present configuration.
6. An SDAT record indicating that the structure was built in 1949.
7. 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, parking, and pedestrian connections.

DISCUSSION

The evaluation of the 6802 Red Top Road Apartments is based on the zoning in place at the time of development in 1949 and a separate evaluation of the current R-18 zoning requirements of the property. The development exceeds the current allowable density of 12 dwelling units per acre in the R-18 Zone, which changed in January 1964; hence, the request for certification of a nonconforming use. The property

has a total of six multifamily dwelling units. The allowable density on the subject site prior to January 1, 1964 was six units on a total of 0.166 acre. The current maximum density only allows four units. Vehicular and pedestrian access to the development is provided via Red Top Road. District Council Resolution 82-1970 waived the off-street parking requirements for this property.

The original building permit issued on October 20, 1949, the letter from WSSC indicating that service to the property was established on August 1, 1949, and the SDAT property record all establish that the property was developed in accordance with the development standards in place. The WSSC letter stating that the meter was set November 6, 1974 and an active account has served the property since March 17, 1999 also supports the applicant's claim that the apartment complex has been in continuous operation, as there is no indication of service interruption to the property. Additional evidence, which consists of apartment license applications, aerial photographs, and a Certificate of Boiler or Pressure Vessel Inspection, all demonstrate that the property has continuously operated as a multifamily apartment building since the nonconforming use began in January 1964 when the density regulations in the R-18 Zone were changed.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, it is concluded that the subject apartments were constructed in accordance with the requirements of the Zoning Ordinance in effect prior to January 1, 1964. There is also no evidence to suggest a lapse of continuous apartment use since their construction.

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 APPROVED the above-noted application.

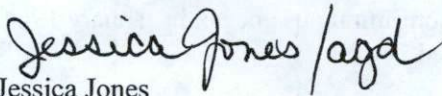
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

* * * * *

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 Washington, seconded by Commissioner Bailey, with Commissioners Washington, Bailey, Geraldo, Shoaff, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, March 10, 2016, in Upper Marlboro, Maryland.

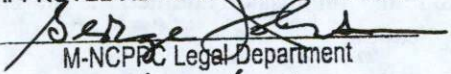
Adopted by the Prince George's County Planning Board this 31st day of March, 2016.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:IRT:rpg

APPROVED AS TO LEGAL SUFFICIENCY


M-NCPPC Legal Department

Date 3/15/16