

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-23136-2015 requesting certification of a nonconforming use for a 21-unit apartment building in the Multifamily Medium Density Residential (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 July 13, 2017, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property, known as Quincy Village Apartments, is located on the south side of Quincy Street across from its intersection of 53rd Street and 53rd Place. The site is developed with a three-story brick apartment building on an approximately one-acre lot. Although the apartment building appears to be single building, it has two separate entrances. One of the entrances is marked as 5301 Quincy Street and the other entrance is marked as 5303 Quincy Street. The site is screened by a four-foot-high iron rod fence on the front and six-foot-high chain-linked fence in the rear and side of the building. The site also has an existing freestanding sign. The details of the sign as well as the height and material of the fences around the property should be shown on the site plan. The subject apartment building has an asphalt parking lot with 27 parking spaces of which 12 are located on the west side of the building and 15 spaces are located under the building at its rear side. The parking spaces are accessed by a 20.30-foot-wide driveway from Quincy Street. The site has frontage on Quincy Street. Pedestrian access to the site is via concrete walkways from Quincy Road.

During the site visit, it was noted that the overall site is well maintained. It has some beautiful mature shade trees and ornamental trees in its front yard, some evergreen bushes and shrubs by the front entrances. The rear of the property is graded downward by approximately 14-feet and has some natural wooded area that separates the apartment development from the condominium development in the immediate rear of the property. However, there are two large metal commercial-sized dumpsters placed on the west side of the apartments, on its the parking lot with old beds and other trash debris around it. The dumpster area is not only blocking two required parking spaces but also making the neighborhood aesthetically unpleasing. These trash dumpsters were never part of the original approvals. These dumpsters and trash must be removed from the parking lot.

B. Development Data Summary:

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	1.005	Unchanged
Use	Residential (3-story apartments 21 dwellings)	Unchanged
Density	20.8 dwellings/per acre	Unchanged
Bedroom Percentages		
1 BR	9(42.8%)	Unchanged
2 BR	10 (47.62%)	Unchanged
3 BR	2(9.5%)	Unchanged
Total Units	21	Unchanged
Lot Coverage	35%	Unchanged

- C. History:** The subject three-story, 21-unit apartment building was constructed in 1970 and was first placed into service in May 1971. At the time, the subject property was zoned Multifamily Medium Density Residential (R-18), the same as it is today. The apartments known as Quincy Village Apartments conformed with all the applicable requirements of the R-18 Zoning regulation, as reflected on the submitted site plan. These requirements included density, parking, building setback, building coverage and bedroom percentages. The density permitted was one dwelling unit for each 2,000 square feet of net lot area. The net lot area of the subject property permitted a total of 21 dwelling units. The subject property became nonconforming on May 6, 1975 when the Zoning Ordinance was changed to limit density in the R-18 Zone to 12 dwelling units per acre. The existing apartment does not meet the current R-18 Zone density requirements. The applicant applied for a Use and Occupancy Permit (23136-2015-U) which was placed on hold because there is no prior use and occupancy permit on record. Therefore, certification of a nonconforming use is required.
- D. Master Plan Recommendation:** The 2009 *Port Town Sector Plan and Sectional Map Amendment for Planning Area 69* retained the subject property in the R-18 Zone.
- E. Request:** The applicant requests certification of a nonconforming use for an existing 21-unit apartment building constructed in 1970 pursuant to building permit 13701-C, which was approved on April 20, 1970. Because some development regulations in the R-18 Zone were changed or adopted after the use was lawfully established, the apartment use became nonconforming. The nonconforming status commenced on May 6, 1975 when the Zoning Ordinance was amended to decrease the original density of 2,000 square feet of net lot area per dwelling unit or 21 dwelling units per acre to 12 dwelling units per acre. Based on the current standard for the R-18 Zone, the 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 multifamily apartment developments to the north across Quincy Street, to the south and to the east of the property, all in the R-18 Zone. The west side of the property is developed with a single-family house and multifamily apartment building in the R-18 Zone beyond.
- 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:

(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 the applicant’s documentation, this apartment building was constructed in 1970 and was first placed into service in May 1971. When the applicant applied for a use and occupancy permit on June 8, 2015, the Department of Permitting, Inspections and Enforcement (DPIE) and the Maryland-National Capital Park and Planning Commission (M-NCPPC), Permit Review Section, could not verify that the apartments were built in accordance with requirements in effect at the time of construction because the original use and occupancy permit record was 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. Deed of ownership by Quincy Village Apartment Ltd dated March 2, 1984 (Exhibit B).
2. A letter dated October 18, 2016 from the Washington Suburban Sanitary Commission (WSSC) stating that the computerized record shows that the water and sewer services have been in use and available to this property since at least April 9, 1999 without any service interruptions for a period longer than 180 days. The account was activated on March 1, 1971, the meter currently serving the property was installed on September 25, 1998, and the previous meter was installed on October 11, 1988. Due to archiving limitations, billing information prior to that date is not available (Exhibit E).
3. Copies of Prince George’s County Rental Licenses from May 27, 1971 to May 27, 2017 which consistently show 21 apartment units on the property (Exhibit F-1 to F-23).
4. A notarized letter of affidavit from Shelby Jean Kaplan (general partner and president of Quincy Village Apartments) dated November 10, 2016 affirming that, since the property was purchased by Quincy Village Apartments Ltd. I on March 2, 1984, the property has operated continuously, and has not ceased operation for more than 180 calendar days (Applicant Exhibit G).

5. Copies of two rent rolls per year showing tenants occupying the apartments from 1992-1994, and a 2007 rent roll containing the move-in date for each tenant. The rent rolls further show that there was no cessation of the use between 1992 and 2016 (Exhibit H, I, and J).

Copies of a rental agreement entered between original owner, Quincy Village Housing, Inc. and the Federal Housing Administration dated August 6, 1970, which is recorded among the Land Records of Prince George's County, MD Liber 3850 Folio 774 (Exhibit K). This agreement required the owner to submit monthly reports and to maintain monthly rent rolls in order to remain in compliance with provisions of the loan program. While these records no longer exist, the original load was assumed by the current owner and eventually fully satisfied in 1999. A copy of this agreement was enclosed as Exhibit L.

6. One June 9, 2017, 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.

DISCUSSION

The above evidence supports the applicant's claim that the subject multifamily dwelling has been in continuous operation since May 1971. After the analysis of all the documents submitted by the applicant, the Planning Board has determined that there has not been any lapse in continuous use for more than 180 consecutive calendar days. The nonconforming use began on May 6, 1975, when the density regulations in R-18 Zone were changed. The allowable density on the subject site prior to May 6, 1975 was 21 units per acre. After that date, the amended R-18 zoning regulation allowed only a maximum of 12 dwelling units on a site that size.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concluded that the subject apartment building was constructed in accordance with the requirements of the Zoning Ordinance in effect prior to May 6, 1975. 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.

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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 Washington, seconded by Commissioner Geraldo, with Commissioners Washington, Geraldo, Bailey, Doerner, and Hewlett voting in favor of the motion at its regular meeting held on Thursday, July 13, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 27th day of July 2017.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

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