

C O R R E C T E D R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed *CNU-28713-200[8]7 requesting certification of nonconforming use for six-unit multifamily apartment 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 October 23, 2008, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject property has approximately 70 feet of frontage along the southeast side of Fairview Avenue and 81 feet on the northeast side of Red Top Road. The site is developed with a six-unit apartment complex used by Mary House I, a nonprofit organization, providing transitional housing to families in need. Six existing parking spaces are located in front of the building.

B. **Development Data Summary**

| | EXISTING | PROPOSED |
|--------------|-----------------------|-----------------|
| Zone | R-18 | Unchanged |
| Acreage | 0.18 | Unchanged |
| Use(s) | Multifamily dwellings | Unchanged |
| Total Units | 6 | Unchanged |
| Site Density | 33.3 units/acre | Unchanged |
| Lot Coverage | 22% | Unchanged |

C. **History:** The subject property was placed in the Residential “A” Zone when it was first included in the Regional District in 1928. The site was recorded as Lot 3, Block 6, of Hampshire View in 1947. The Zoning Ordinance was amended in 1947, at which time the subject property was placed in the Residential “C” Zone. The subject apartments were constructed in 1949 in accordance with the 1947 requirements still in place. The development standards at that time permitted allowable density based on 625 square feet “gross lot area per family unit”. The complex became nonconforming in November 1949 when the Comprehensive Zoning of the county took place, placing the development in the new R-18 Zone. The R-18 Zone decreased the allowable density to 1,800 square feet of lot area per dwelling unit (24.2 units/acre). The R-18 Zone was later amended to allow a maximum of 12 units per acre (CB-51-1975). This site was constructed at a density of 33.3 dwelling units per acre. The applicant applied for a use and occupancy permit (3331-2007) which was put on hold because no prior use and occupancy permits for the property could be found.

*Denotes correction

[~~Brackets~~] denotes deletion

D. **Master Plan Recommendation:** The November 2000 *Approved Master Plan and Sectional Map Amendment for the Heights and Vicinity (Planning Area 76A)* recommends multifamily development at an urban density. The 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 for a network of sustainable, transit supporting, mixed-use, pedestrian-oriented, medium-to high-density neighborhoods.

E. **Request:** The applicant requests certification of an existing six-unit apartment complex that was constructed 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 November 29, 1949, when the Zoning Ordinance was amended to decrease the original minimum net lot area per dwelling unit from 625 square feet gross lot area per family unit to 1,800 square feet of lot per dwelling unit. The Zoning Ordinance was further amended in 1975 allowing a maximum of 12 dwelling units per acre. Based on the current standard of square footage per dwelling unit, only three units would be allowed.

F. **Surrounding Uses:**

The site is surrounded by the following uses:

North, Northeast and Southwest: Identical apartment buildings in the R-18 Zone

Southeast: PEPCO right-of-way 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:

(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:**
 - (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 state assessment information, the apartments were constructed in 1949. The apartments are clearly shown in a 1957 USDA aerial photo of the site, which is the earliest photo available of the property. When the applicant applied for a use and occupancy permit in 2007, the Permit Review Section staff 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. Maryland Department of Assessments and Taxation record indicating the structure was built in 1949.
2. Prince George's County rental license applications from 1970-2007. Prince George's County did not require rental licenses prior to 1970.

3. A letter dated January 18, 2008, from an individual who once owned this site and currently owns adjacent properties. The writer has, at various times, owned and/or managed as many as 20 of the 29 apartment buildings in the Hampshire View subdivision. The letter gives the writer's perspective as to the need for these apartment units and the commendable job the applicant and others are doing in keeping these buildings viable.
4. On March 25, 2007, site plan of the subject property was submitted that contains a comparison of the regulations in effect when the apartments were built to the current regulations. The site plan shows building locations, setbacks, parking and pedestrian connections.
5. Aerial photos covering the years 1957-2008 showing the apartment buildings in their current configuration.

DISCUSSION:

The Board finds that the above evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1949. The nonconforming use began in November 1949 when the property was rezoned from Residential "C" to the R-18 Zone. The comprehensive rezoning changed the maximum density from 625 square feet gross lot area per family unit to 1,800 square feet of lot area per dwelling unit. The complex became further nonconforming when the R-18 Zone was amended in 1975 to allow a maximum of 12 units per acre. The allowable density on the subject site prior to November 1949 was 12.9 units on a total of 0.18 acre. In 1975, the allowable density on 0.18 acre became three dwelling units. The subject site has a total of six dwelling units; therefore, the existing density in the apartment complex exceeds the maximum requirement by three units.

CONCLUSION:

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Board concludes that the subject apartments were 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.

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 Vaughns, seconded by Commissioner Clark, with Commissioners Vaughns, Clark, Cavitt and Parker voting in favor of the motion, and with Commissioner Squire temporarily absent at its regular meeting held on Thursday, October 23, 2008, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 13th day of November 2008 *and corrected on November 20, 2008.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

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