



# THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 11-17

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File No. CNU-3450-09

## RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-3450/09, Arnold Garden Apartments requesting certification of an existing, 68-unit, multifamily 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 February 24, 2011, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is located one-half mile from Shadyside Avenue, south of Pennsylvania Avenue (MD 4). The subject property is bounded by Whitehall Street to the east, Arnold Road to the south, and Ewing Avenue to the west. The site is developed with a three-building, three-story, brick garden apartment complex known as Arnold Gardens. Building one, 2524 Whitehall Street (11 units) and 2526 Whitehall Street (12 units), is developed with 23 units; building two, 2521 Ewing Avenue (11 units) and 2523 Ewing Avenue (12 units) has 23 units, and; building three, 2525 Ewing Avenue (11 units) and 2527 Ewing Avenue (11 units) has 22 units. The subject property contains 68 multifamily units on 3.1233 acres and a paved parking lot with 85 parking spaces (as required per 1970 parking standards). Access to the development is provided via ingress/egress on Whitehall Street and Ewing Avenue.

B. **Development Data Summary**

	EXISTING	APPROVED
Zone	R-T	Unchanged
Acreage	3.1233 total	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Site Density	21.78	Unchanged
Bedroom Percentages		
1 BR	34 (50%)	Unchanged
2 BR	27 (40%)	Unchanged
3 BR	7 (10%)	Unchanged
Lot Coverage	30%	Unchanged
	40,802 s.f.	Unchanged

C. **History:** The Arnold Gardens Apartments were constructed beginning in 1970 and completed in 1971. The complex was occupied by residents beginning in 1971. The complex became nonconforming in 1975 when the Zoning Ordinance was amended to decrease the maximum density in the R-18 (Multifamily Medium Density Residential) Zone from 2,000 square feet net lot area per dwelling unit to a maximum of 12 units per acre (County Council Bill CB-51-1975). The Arnold Gardens Apartments were constructed at a density of 21.78 dwelling units per acre. The site plan includes a table that indicates the Zoning Ordinance requirements for the R-18 Zone at

the time the apartments were constructed, the current R-T (Townhouse) zoning requirements, and where the complex conforms or deviates from those requirements. Bedroom percentages are also provided. The site plan provided is in conformance with 1970 Zoning Ordinance requirements and for bedroom percentages. The current owner, Saints Real Estate Ventures III, LLC, purchased the property from the Marvin Gardens Limited Partnership on July 21, 2008. The apartment complex is currently under a Housing Assistance Payment (HAP) contract with the U. S. Department of Housing and Urban Development (HUD). The applicant, Saints Real Estate Ventures III, LLC, applied for a Use and Occupancy Permit (No. 3450-2009-00) which was denied because no prior use and occupancy permits for the property could be found.

The previous property owner was not issued a use and occupancy permit in 1975 when the use was originally established.

- D. **Request:** The applicant requests certification of an existing, 68-unit, multifamily apartment complex that was constructed beginning in 1970 and completed in 1971, when the property was originally zoned R-18. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began May 6, 1975 when the Zoning Ordinance was amended to decrease the minimum net lot area per dwelling unit from 2,000 square feet per dwelling unit to 12 dwelling units per acre. The property was rezoned to the R-T Zone by the 2010 *Approved Subregion 4 Master Plan and Adopted Sectional Map Amendment*. The R-T Zone prohibits the use of multifamily dwellings unless the site complies with Section 27-443, Footnote 88, of the Zoning Ordinance, which this site does not because this development is not the subject of a condominium regime, the property is not located in a Transit Development Overlay Zone, the property does not abut the District of Columbia, and the development does not include a mix of residential and commercial uses. Based on the current standard of square footage per dwelling unit, only 34 units are allowed in the development. The apartment complex, however, has 68 dwelling units, which is what was permitted according to the R-18 Zone regulations in the 1970 Zoning Ordinance.

- E. **Surrounding Uses:** The site is surrounded by the following uses:

North—	Single-family dwellings on property zoned Townhouse (R-T)
West—	Vacant land zoned R-T across Whitehall Road
East—	Single-family dwellings on property zoned R-T across Ewing Avenue
South—	A childcare center and other retail uses on property zoned Mixed Use Town Center (M-U-TC)

- F. **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 the use 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 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 one hundred eighty (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 one hundred eighty (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, Arnold Gardens Apartments was constructed beginning in 1970 and completed in 1971. When the applicant applied for a use and occupancy permit in 2010, the Planning Information Services staff could not verify that the Arnold Gardens 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), 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 November 19, 2009 from the Washington Suburban Sanitary Commission (WSSC) providing summaries of service indicating that the subject property has been serviced with water and sewer continuously since at least 1999 with no break in service longer than 180 days (Exhibit 1).
2. A letter dated August 10, 2010 indicating that Ms. Ruby Johnson, a current Arnold Gardens apartment resident, has lived at her current address since July 1, 1971 (Exhibit 2).
3. A letter dated August 10, 2010 indicating that Ms. Johnnie Rhodes, a current Arnold Gardens apartment resident, has lived at her current address since October 1, 1975 (Exhibit 3).
4. Prince George's County rental license applications from 1971 to 1977 and 1979 to 2010 (Exhibit 4).
5. A January 24, 2011 site plan of the subject property was submitted that contains a table comparing the existing Arnold Gardens apartment complex to the R-18 Zone regulations in effect when the apartments were built and with the current regulations. The table also indicates the allowable bedroom percentage requirements per the 1970 Zoning Ordinance. The site plan shows building locations, setbacks, parking, and pedestrian connections. There is also a note on the site plan citing Permits 14554-C, 14555-C, and 14566-C, which were approved by The Maryland-National Capital Park and Planning Commission (M-NCPPC) on July 15, 1970 for the construction of these apartments.
6. At the Planning Board Hearing, the Planning Board accepted as evidence of continuing use as a multifamily dwelling, the list of Subsidized Mortgages in the State of Maryland Maturing through 2014 (as listed on HUD's website). This document demonstrates that there is an active Section 8 contract with an active FHA loan originating on November 23, 1971 and maturing on November 1, 2011.

## DISCUSSION

The above evidence which consists of WSSC utility bill summaries, signed letters from longtime residents, and approved rental license applications dating back to 1971 supports the applicant's claim that the Arnold Gardens apartment complex has been in continuous operation since being constructed in 1970. The subject property has a total of 68 multifamily dwelling units. The site was developed in compliance with 1970 Zoning Ordinance requirements. The nonconforming use began in 1975 when the maximum density changed from a minimum of 2,000 square feet net lot area per dwelling unit to 12 dwelling units per acre (CB-51-1975). The property was rezoned from R-18 to R-T by the 2010 *Approved Subregion 4 Master Plan and Adopted Sectional Map Amendment*. The R-T Zone prohibits the use of multifamily dwellings. The allowable density on the subject site in 1970 was 21.78 dwelling units per acre on a total of 3.1233 acres. In 1975, the allowable density on 3.1233 acres became 34 dwelling units. The current use became a prohibited use on June 1, 2010 when the R-T Zone requirements became effective.

## CONCLUSION

The Planning Board based their approval of the certified nonconforming use on the list of Subsidized Mortgages in the State of Maryland Maturing through 2014 (as listed on HUD's website). The Planning Board determined that the evidence submitted by the applicant, and provided by staff, alone did not prove continuous use as multifamily dwellings since 1975, when the use became non-conforming. Therefore, the HUD mortgage citation, together with the lack of contradictory evidence from other sources, allowed the Planning Board to conclude that the subject property, the Arnold Gardens Apartments, were constructed in accordance with the requirements of the Zoning Ordinance in effect in 1970 and determined that there was no evidence to suggest a lapse of continuous multifamily dwelling 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.

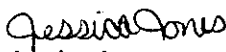
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the Circuit Court for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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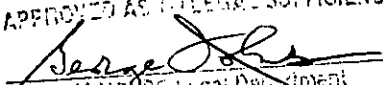
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Clark, seconded by Commissioner Squire, with Commissioners Clark, Squire, Cavitt and Parker voting in favor of the motion, and with Commissioner Vaughns absent at its regular meeting held on Thursday, February 24, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 17<sup>th</sup> day of March 2011.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Acting Planning Board Administrator

PCB:JJ:IT:arj

APPROVED AS TO LEGAL SUFFICIENCY.  
  
M-NCPPC Legal Department  
Date 3/7/11