

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed CNU-17762-2006 requesting Certification for a Nonconforming Use 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 November 29, 2007, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property has approximately 1,000 feet of frontage along the southeast side of Southern Avenue, 73 feet northeast of 23rd Parkway Hillcrest Heights. The site is developed with the four-story Oxon Terrace apartment complex. The subject property contains 228 multifamily units in 17 buildings on 5.52 acres. Access is provided via six driveways from Southern Avenue. The site is directly contiguous to open parkland on three sides; Oxon Run Park is located directly south of the site.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone	R-18	Unchanged
Acreage	5.52	Unchanged
Use(s)	4-story apartments 228 dwellings	Unchanged
Site Density	41.2/ per acre	Unchanged
Bedroom Percentages 1BR 2 BR	126 (55.3%) 102 (44.7%)	Unchanged Unchanged
Total Units	228	Unchanged
Lot Coverage	42%	Unchanged

- C. **History:** The subject property was placed in the "A" Residential Zone when it was first included in the Regional District in 1942. The Zoning Ordinance was amended in 1947, at which time it placed the subject property in the "C" Residential Zone. The Oxon Terrace Apartments were constructed in 1949 in accordance with the 1942 requirements still in place. The development requirements had not changed. The complex became nonconforming in November 1949 when the Zoning Ordinance was amended, placing the development in the R-18 Zone. The R-18 Zone decreased the allowable density from 625 square feet "gross lot area per family" to 1,800 square feet of lot area per dwelling unit. The R-18 Zone was later amended to allow a maximum of 12 units per acre (CB-51-1975). Oxon Terrace was constructed at a density of 41.2 dwelling units per acre. The applicant applied for a use and occupancy permit (Number 17742-2006) and was denied because no prior use and occupancy permits for the property could be found.

- D. **Master Plan Recommendation:** The November 2000 *Approved Master Plan and Sectional Map Amendment for the Heights & Vicinity* 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, 228-unit apartment complex that was 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 began 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 to allow a maximum of 12 dwelling units per acre. Based on the current standard of square footage per dwelling unit, only 66 units are allowed.

F. **Surrounding Uses:**

The site is surrounded by the following uses:

Northwest: Single-family attached and multifamily homes in the District of Columbia

Northeast: Open Space zoned O-S and R-O-S; Oxon Park Apartments, zoned R-18

Southwest: Across 23rd Parkway, undeveloped land in the R-30C Zone

South: Oxon Run Park in the R-O-S 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 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 non-operation 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 prior to a Zoning Ordinance amendment in November of that year. When the applicant applied for a use and occupancy permit in May 2006, the Planning Information Services 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), 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. Letter dated July 9, 2007, from WSSC indicating the account activation date for the property as November 1, 1948, and further stating that available records show that services have been continuously provided since at least May 1989.
3. Prince George's County rental license applications from 1970-2005.

4. Letter dated October 25, 2006, from Department of Environmental Resources indicating Prince George's County did not require rental licenses until 1970.
5. Letter dated June 16, 1950, from the Office of the Director, Washington, DC, granting permission to occupy an additional 15 apartments for a total of 214 living units approved for occupancy.
6. Affidavit dated May 22, 2006, from Charles Montgomery stating he has been continuously employed as property manager for Oxon Terrace Apartments since 1966.
7. A 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.

DISCUSSION:

In the Board's opinion, 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 maximum density changed from 625 square feet gross lot area per family unit to 1,800 square feet of lot 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 384 units on a total of 5.52 acres. In 1975 the allowable density on 5.52 acres became 66 dwelling units. The subject site has a total of 228 dwelling units; therefore, the existing density in the apartment complex exceeds the maximum requirement by 29.2 dwelling units per acre, or 162 units. Bedroom unit percentages were adopted on October 1, 1968. The development exceeds the allowable percentage for two bedroom units (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). The development has 102 two bedroom units representing 44.7 percent. The development is also nonconforming with regard to green area (60 percent required, 58 percent provided); rear yard setbacks (42 feet required, 21-70 feet provided); and distance between buildings (74 feet required, minimum of 36 feet provided). The Board recommends the above information be included on the approved site plan. The complex has 173 parking spaces, but there was no requirement for off-site parking at the time the complex was constructed. The Zoning Ordinance currently requires the subject property to have 463 parking spaces. The reference to the handicapped space in the notes should be deleted as there was no requirement to provide handicapped parking spaces in 1949, unless the applicant prefers to provide the appropriate number of handicapped spaces and dimensions in conformance with current ADA requirements.

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 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 Squire, seconded by Commissioner Vaughns, with Commissioners Squire, Vaughns, Clark, Cavitt and Parker voting in favor of the motion, at its regular meeting held on Thursday, November 29, 2007, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 20th day of December 2007.

Oscar S. Rodriguez
Executive Director

By Frances J. Guertin
Planning Board Administrator

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