

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-23926-2015, Red Top Road Apartments, requesting certification of a nonconforming use for a six-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 6, 2017, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 6808 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 from Red Top Road. 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:**

	<b>EXISTING</b>	<b>APPROVED</b>
Zone	R-18	R-18
Acreage	0.17	0.17
Use(s)	Multifamily dwellings	Multifamily dwellings
Total Units	6	6
Site Density	36.14 dwelling units/acre	36.14 dwelling units/acre
Lot Coverage	26.59%	26.59%

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 platted as Block 3, Lot 5, of Hampshire View in November 1947 (see Plat Book BB 14/62). The subject apartments were constructed in 1949 in accordance with the 1942 development standards, which permitted six units based on 625 square feet of gross lot area per dwelling unit. Based upon the allowable density, the 1942 development standards permitted up to 11 units on the 7,214-square-foot lot. The Prince George’s County Zoning Ordinance was amended in 1949, at which time the subject property was placed in the “C” Residential Zone. 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 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, and reduced the density for this site to four units. Density requirements were changed again in 1975 to the current maximum of

12 units per acre. All six units are one-bedroom. The applicant applied for a use and occupancy (U&O) permit because no prior U&O permits for the property could be located; therefore, a public hearing before the Prince George's County Planning Board was 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* 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 in the R-18 Zone.

F. **Request:** The applicant requests certification of an existing six-unit apartment building that was permitted and built in 1949 prior to the zoning change. Because some development regulations in the R-18 Zone were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. Specifically, the nonconforming status commenced November 29, 1949, when the property was placed in the R-18 Zone, which had a minimum net lot area requirement of 1,800 square feet per dwelling unit, thus only permitting four units based on the 7,214-square-foot lot. Per today's standards, only one unit is permitted (1975 change).

G. **Definition of a Nonconforming Use:**

(A) The "Use" of any "Building," "Structure," or land which is not in conformance with a requirement of the Zone in which it is located (as it specifically applies to the "Use"), provided that:

- (i) The requirement was adopted after the "Use" was lawfully established; or
- (ii) The "Use" was established after the requirement was adopted and the District Council has validated a building, use and occupancy, or sign permit issued for it in error.

(B) The term shall include any "Building," "Structure," or land used in connection with a "Nonconforming Use," regardless of whether the "Building," "Structure," or land conforms to the physical requirements of the Zone in which it is located.

**Certification Requirements**—Certification of a nonconforming use requires that certain findings be made. 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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).**

**(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 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**—Per the applicant’s documentation, the apartment building located at 6808 Red Top Road was constructed in 1949. When the applicant applied for a U&O permit, it was determined that certification of nonconforming use is required because the apartment exceeds the current maximum density for a multifamily property in the R-18 Zone. The Property Standards Division could not verify that the multifamily apartment building was built in accordance with requirements in effect at the time of construction because the 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 nonconforming use site plan of the subject property.
2. Aerial photos from 1965–2014 depicting images of vehicles, indicative of resident occupancy.
3. A copy of the May 24, 1949, settlement sheet reflecting the purchase of the six-unit apartment building.
4. Maryland State Department of Assessments and Taxation Real Property Data Search page indicating that the primary structure was built in 1949.
5. Final Plat for Hampshire View, Part of Blocks 3, 5 and 6, dated October 23, 1947.
6. A copy of a signed statement submitted by Michael Trageser, a property owner on Red Top Road since 1976, regarding his personal familiarity of the ownership, management of the subject properties as an apartment complex, and continuous existence thereof since 1976.
7. A copy of the May 21, 1979 rent roll.
8. The Department of Environmental Resources, Property Standards Division, of Prince George’s County issued multifamily housing licenses for the six-unit apartment building located on the subject property from June 14, 1979 – June 14, 2015. The June 14, 2015 Prince George’s County Rental license is due for expiration on June 14, 2017.
9. A copy of the 1992 ledger that provides a complete record of financial transactions for the six-unit apartment buildings.

10. The applicant has expended funds on the subject property to pay the property taxes, and to maintain and operate the six-unit apartment building. These are indicated on the applicant's 1985-2015 income tax returns.
11. The applicant has maintained tenant occupancy in the six-unit apartment buildings continuously from 1969–2016. Copies of residential lease agreements from 1969–2016.

The leases are provided in the following order:

- a. 2016 Leases:
  - (1) 6808 Unit 1 – lease term 10/23/2015 – 10/31/2016
  - (2) 6808 Unit 2 – lease term 6/17/2016 – 6/30/2017
- b. 2013 Leases:
  - (1) 6808 Unit 2 – lease term 3/4/2013 – 3/31/2014
- c. 2012 Leases:
  - (1) 6808 Unit 3 – lease term 12/1/2012 – 11/30/2013
- d. 2011 Leases:
  - (1) 6808 Unit 1 – lease term 3/26/2011 – 3/31/2012
- e. 2009 Leases:
  - (1) 6808 Unit 2 – lease term 5/2009 – 4/2010
- f. 2008 Leases:
  - (1) 6808 Unit 3 – lease term 11/2008 – 10/2009
- g. 2007 Leases:
  - (1) 6808 Unit 2 – lease term 5/7/2007– 5/2008
- h. 2005 Leases:
  - (1) 6808 Unit 3 – lease term 3/2005 – 2/2006
- i. 2004 Leases:
  - (1) 6808 Unit 1 – lease term 11/2004 – 10/2005
- j. 2003 Leases:
  - (1) 6808 Unit 4 – lease term 6/13/2003 – 6/4/2004
- k. 2001 Leases:
  - (1) 6808 Unit 2 – lease term 10/2001 – 9/2002

- l. 2000 Leases:
  - (1) 6808 Unit 2 – lease term 5/12/2000 – 5/2001
  
- m. 1998 Leases:
  - (1) 6808 Unit 3 – lease term 2/1/1998-1/31/1999
  
- n. 1997 Leases:
  - (1) 6808 Unit 1 – lease term 8/2/1997 – 7/31/1998
  
- o. 1996 Leases:
  - (1) 6808 Unit 2 – lease term 9/18/96 – 8/31/1997
  
- p. 1995 Leases:
  - (1) 6808 Unit 6 – lease term 5/7/1995 – 4/30/1996
  
- q. 1993 Leases:
  - (1) 6808 Unit 3 – lease term 11/1/1993 – 10/31/1994
  
- r. 1992 Leases:
  - (1) 6808 Unit 2 – lease term 9/4/1992 – 8/31/1993
  
- s. 1991 Leases:
  - (1) 6808 Unit 3 – lease term 4/1/1991 – 3/31/1992
  
- t. 1990 Leases:
  - (1) 6808 Unit 2 – lease term 11/1/1990 – 10/31/1991
  
- u. 1989 Leases:
  - (1) 6808 Unit 6 – lease term 4/15/1989 – 3/31/1990
  
- v. 1988 Leases:
  - (1) 6808 Unit 2 – lease term 5/1/1988 – 4/30/1989
  
- w. 1987 Leases:
  - (1) 6808 Unit 2 – lease term 1/15/1987 – 12/31/1987
  
- x. 1986 Leases:
  - (1) 6808 Unit 1 – lease term 11/1/1986 – 10/31/1987
  
- y. 1985 Leases:
  - (1) 6808 Unit 3 – lease term 8/1/1985 – 7/31/1986
  
- z. 1984 Leases:
  - (1) 6808 Unit 3 – lease term 8/1/1984 – 7/31/1985

- aa. 1983 Leases:
    - (1) 6808 Unit 5 – lease term 12/1/1983 – 11/30/1984
  - bb. 1982 Leases:
    - (1) 6808 Unit 4 – lease term 10/15/1982 – 9/30/1983
  - cc. 1981 Leases:
    - (1) 6808 Unit 4 – lease term 5/13/1981 – 4/30/1982
  - dd. 1980 Leases:
    - (1) 6808 Unit 5 – lease term 12/1/1980 – 11/30/1981
  - ee. 1979 Leases:
    - (1) 6808 Unit 3 – lease term 5/1/1979 – 4/30/1980
  - ff. 1978 Leases:
    - (1) 6808 Unit 5 – lease term 4/1/1978 – 3/31/1979
    - (2) 6808 Unit 6 – lease term 5/1/1978 – 4/30/1979
  - gg. 1976 Leases:
    - (1) 6808 Unit 2 – lease term 1/1/1976 – 12/31/77
12. Current photos of the six-unit apartment building.
13. A letter dated June 20, 2017, from the Washington Suburban Sanitary Commission (WSSC), stating that the WSSC account for this address was established on February 1, 1963. The record shows that the water and sewer services have been in use and available to this property since at least June 21, 1995.
14. A receipt verifying purchase of a complete list of all adjoining property owners, registered associations and municipalities located within a mile of the subject property; an affidavit and an Informational Mailing letter that were mailed to all registered associations regarding 6808 Red Top Road’s request for Certification of Nonconforming Use Application No. 23926-2015 on January 31, 2017.
15. M-NCPPC’s permit comments—M-NCPPC (Mary Hampton) reviewed the use & occupancy permits for the properties. It was then realized that certification of nonconforming use is necessary for the use and occupancy permits to be approved as the buildings exceeds the current maximum density of the R-18 Zone which is 12 units per acre.

## DISCUSSION

The evaluation of 6808 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; hence, the request for certification of a nonconforming use. The property has a total of six one-bedroom dwelling units. The allowable density on the subject site prior to November 29, 1949 was up to 11 units. The current maximum density only allows one unit for the site. Vehicular and pedestrian access to the development is provided via Red Top Road. Council Resolution 82-1970 waived the off-street parking requirements for this property.

The original plat recorded on October 23, 1947 and the SDAT property record all establish that the property was developed in accordance with the development standards in place at that time. The letter from Mr. Trageser dated February 2, 2017, indicating his ownership and knowledge of the multifamily properties in the Red Top Road neighborhood since 1976 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 consists of multifamily rental licenses, leases, and the letter from WSSC indicating that service to the property was established February 1, 1963.

Aerial photographs and tax returns all demonstrate that the property has continuously operated as a multifamily apartment building since the nonconforming use began on November 29, 1949, 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 reasonable to conclude that the multifamily apartment building, 6808 Red Top Road, was constructed in accordance with the requirements of the Zoning Ordinance in effect prior to 1949. There is also no evidence to suggest a lapse of continuous operation as a multifamily property since the building became nonconforming on November 29, 1949.

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 Geraldo, seconded by Commissioner Doerner, with Commissioners Geraldo, Doerner, Bailey, and Hewlett voting in favor of the motion, and with Commissioner Washington absent at its regular meeting held on Thursday, July 6, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 13th day of July 2017.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator

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