

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-58255-2015, Hampshire View, Block 3, Lot 7, 6804 Red Top Road requesting certification of a nonconforming use for a six-unit apartment building in the 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 May 18, 2017, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 6804 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 off of 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:**

	EXISTING	APPROVED
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 Lot 7, Block 3, 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 7,405-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, which would only permit four units. Density requirements were changed in 1975 to the current maximum of 12 units per

acre. All six of the 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 is 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 zoned R-18.

F. **Request:** The applicant requests certification of an existing six-unit apartment building that was permitted and 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 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 of lot area per dwelling units, thus only permitting four units based on the 7,405-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, 6804 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. Prince George’s County Rental Housing Licenses dated 1970–2016.
2. A letter dated March 2, 2016 from the Washington Suburban Sanitary Commission (WSSC), stating that the address has had an active WSSC account since May 1, 1949 with meter services set January 18, 1978. The record shows that the water and sewer services have been in use and available to this property since at least March 25, 1999.
3. A building permit dated October 27, 2008, issued by the Prince George’s County Department of Permitting, Inspections and Enforcement (DPIE) for electrical work.
4. Service Agreement with Waste Management effective April 1, 2004 for 6804 Red Top Road.
5. Final Plat, Hampshire View, Blocks 3, 5 and 6, recorded in the plat record of Prince George’s County on October 23, 1947.
6. A Maryland State Department of Assessments and Taxation (SDAT) record indicating the structure was built in 1949.
7. Aerial imagery of the property 1965 through 2016 showing the location of the existing building on the site in its present configuration.
8. A site plan of the subject property 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 evaluation of 6804 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 on the subject property. The current maximum density only allows one unit. 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, the letter from WSSC indicating that service to the property was established on May 1, 1949, and the SDAT property record all establish that the property was developed in accordance with the development standards in place. The WSSC letter stating that the meter was set on January 18, 1978 and an active account has served the property since March 25, 1999 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, which consists of apartment license applications, aerial photographs, and a building permit for electrical work, 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, 6804 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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PGCPB No. 17-76
File No. CNU-58255-2015
Page 6

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 Bailey, with Commissioners Washington, Bailey, and Hewlett voting in favor of the motion, and with Commissioners Doerner and Geraldo absent at its regular meeting held on Thursday, May 18, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 8th day of June 2017.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

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