

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-4668-14, Parkview Garden Apartments, requesting certification of a nonconforming use for a 592-unit multifamily 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 July 31, 2014, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is a 27.74-acre property located on 64th Avenue, north of East-West Highway (MD 410), in Riverdale, Maryland. Parkview Apartments is a 27-building, 592-unit, multifamily apartment development. The property is zoned Multifamily Medium Density Residential (R-18). Vehicular access to the development is via 64th Avenue and Brier Boulevard. There are pedestrian walkways throughout the development. The existing asphalt parking lot provides a total of 701 parking spaces. The property has access to public transit service for residents. Under current regulations, three loading spaces are required, but none are provided.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	27.741	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Site Density	29.46 d.u./a	Unchanged
Bedroom Percentages Parcel A		Unchanged
1 Bedroom	203(34.5%)	
2 Bedroom	329 (55.5%)	
3 Bedroom	60 (10%)	
Lot Coverage Parcel A	16,000 s.f./d.u. 1,077,773 s.f./12 d.u.	Unchanged

C. **History:** The Parkview Apartments were constructed as a 592-unit apartment complex between 1960 and 1963 at a density of 24 dwelling units per acre. There are a total of 701 parking spaces provided. The complex became nonconforming on October 1, 1968 when bedroom percentages were adopted, and again on May 6, 1975 when the R-18 Zone density changed to 12 dwelling units per acre. The site plan includes a table that indicates the Zoning Ordinance requirements in place at the time the apartments were constructed, the current R-18 Zoning Ordinance requirements, and where the complex conforms to or deviates from those requirements. There are

no previously issued use and occupancy permits for the apartment complex. The Parkview Apartment complex recently changed ownership, which requires a renewal of the use and occupancy permit. The applicant applied for a use and occupancy permit and was denied because no prior use and occupancy permits for the property could be found; therefore, a public hearing before the Planning Board is required.

- D. **Request:** The applicant requests certification of an existing, 592-unit, multifamily apartment complex that was built between 1960 and 1963. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began when the density requirements were changed in the R-18 Zone. Based on the current standard of 12 dwelling units per acre for the R-18 Zone, only 333 dwelling units are permitted. The apartment complex, however, has 592 dwelling units, which is what was permitted according to the regulations in place at the time of construction between 1960 and 1963.
- E. **Surrounding Uses:** The site is surrounded by the following uses:
- North—** Undeveloped property zoned Reserved Open Space (R-O-S).
- West—** 64th Avenue and developed residential properties zoned One-Family Detached Residential (R-55).
- East—** Baltimore-Washington Parkway (MD 295).
- South—** Developed property with commercial uses zoned Townhouse (R-T).
- 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 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 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:**
 - (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, the Parkview Apartment community was constructed between 1960 and 1963. When the applicant (the new property owner) applied for a use and occupancy permit in 2014, the Planning Information Services staff could not verify that the Parkview Apartments were built in accordance with requirements in effect at the time of construction because the 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-National Capital Park and Planning Commission (M-NCPPC) aerial maps for 2011, 2009, 2007, 2006, 2005, 2000, 1998, 1993, 1984, 1980, 1977 and 1965 (Exhibit A).
2. Maryland State Department of Assessments and Taxation property record, which notes the sale of the property on February 4, 1983 (Exhibit B).
3. Prince George's County Department of Environmental Resources (DER) rental licenses dated June 24, 2008, June 24, 2008, and June 24, 2012 (Exhibit C).
4. Apartment Income and Expense questionnaires submitted to Prince George's County for the years 1986–2012 (Exhibit D).
5. A letter from resident Mr. Sherman Lee citing he has lived at the subject property for 28 years (Exhibit E).
6. Income tax returns for the years 1983–1985 and 1992–1993 (Exhibit F).
7. A site plan prepared by Ben Dyer & Associates (Exhibit G).

DISCUSSION

The evaluation of the Parkview Apartments is based on the zoning in place at the time of development construction between 1960 and 1963 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 (which changed May 6, 1975), and the allowable bedroom percentages for two- and three-bedroom units (which became effective October 1, 1968); hence, the request for certification of a nonconforming use. The property has a total of 592 multifamily dwelling units. The allowable density on the subject site, per the R-18 Zone imposed at the time of construction, was 23.9 dwelling units per acre on a total of 24.74 acres. The current allowable density is 12 dwelling units per acre. While the subject property does exceed the bedroom percentages for two- and three-bedroom units, Section 27-419 of the Zoning Ordinance does not require a special exception for existing multifamily dwellings that exceed bedroom percentages if there is no increase in the exterior dimensions of the building. No physical changes to the property are proposed. Therefore, it is in compliance. Vehicular access to the development is provided via 64th Avenue and Brier Boulevard and pedestrian walkways throughout the complex. A total of 701 parking spaces are provided. Three loading spaces are required, but not provided because it was not required per the zoning in place at the time of construction.

The above evidence, which consists of M-NCPPC aerial maps dating back to 1965; a Maryland State Department of Assessments and Taxation property record noting the sale of the property on February 4, 1983; Prince George's County DER rental licenses dated June 24, 2008, June 24, 2008, and June 24, 2012; Apartment Income and Expense questionnaires submitted to Prince George's County for the years 1986–2012; a site plan prepared by Ben Dyer & Associates; and income tax returns for the years 1983–

1985 and 1992–1993 photographs of the site, and a letter from the Washington Suburban Sanitary Commission citing service since 1960, both introduced into evidence by the applicant’s attorney at the July 31, 2014 Planning Board hearing; supports the applicant’s claim that the Parkview Apartment complex has been in continuous operation since being constructed between 1960 and 1963. The site was developed in compliance with the zoning requirements when it was constructed, not the current R-18 Zoning Ordinance requirements.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject property, the Parkview Apartments, was not subjected to the requirements of the Zoning Ordinance when constructed between 1960 and 1963. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since 1968 or 1975 when the use became nonconforming.

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 Washington, seconded by Commissioner Shoaff, with Commissioners Washington, Shoaff, Bailey and Hewlett voting in favor of the motion, and with Commissioner Geraldo absent at its regular meeting held on Thursday, July 31, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 4th day of September 2014.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator