

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-30458-13-01, 6819 Red Top Road, requesting certification of a nonconforming use for an existing six-unit apartment building 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 20, 2014, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, 6819 Red Top Road, is located 410 feet from the intersection of Red Top Road and East-West Highway (MD 410). The site is developed with a two-story, brick, garden-style, six-unit apartment building on a cul-de-sac. Access to the property is off of Red Top Road. Off-street parking is available for the subject property. 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	Unchanged
Acreage	0.25	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	6	Unchanged
Site Density	24 units/acre	Unchanged
Lot Coverage	11.8%	Unchanged

C. **History:** The subject apartments were constructed in 1953 in accordance with the 1949 requirements still in place. The development standards at that time permitted the allowable density based on 1,800 square feet of gross lot area per dwelling unit, which would permit six units. The complex became nonconforming on January 1, 1964 when the Zoning Ordinance was amended to require a minimum of 2,000 square feet net lot area per dwelling unit, which would permit five units. The current Multifamily Medium Density Residential (R-18) Zone requirements only permit three units. The complex is also nonconforming to bedroom percentages since October 1, 1968 when new requirements were adopted. The subject property, 6819 Red Top Road, recently changed ownership, which requires a renewal of the use and occupancy (U&O) permit. The applicant applied for a U&O Permit (30458-2013-01) and was denied because no U&O permits for the property could be found; 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 1990 *Adopted Sectional Map Amendment for Planning Areas 65, 66, and 67* (Langley Park-College Park-Greenbelt 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 the following uses:
- North, South, East, and West**—Developed property with similar garden-style multifamily apartment buildings zoned R-18 Zone.
- F. **Request:** The applicant requests certification of an existing six-unit apartment building that was constructed in 1953. 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 January 1, 1964 when the Zoning Ordinance was amended to increase the original minimum net lot area per dwelling unit from 1,800 square feet of gross lot area per dwelling unit to 2,000 square feet of lot area per unit. The apartments became nonconforming to bedroom percentages on October 1, 1968 when new requirements were adopted.
- 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 of the Zoning Ordinance sets forth the following specific requirements for certifying a nonconforming use:

Section 27-244. Certification.

- (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 nonoperation 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—Per the state assessment database, the apartments were constructed in 1953. When the applicant applied for a U&O permit in 2013, the Permit Review Section could not verify that the apartments were built in accordance with requirements in effect at the time of construction because 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 letter dated April 16, 2014 from the Washington Suburban Sanitary Commission (WSSC) stating that the address has had an active WSSC account since April 1, 1953. The present meter was installed on October 26, 2005; two previous meters were installed on

May 23, 2002 and April 15, 1996. WSSC noted that there has been no service interruption since March 29, 1999.

2. Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), Enforcement Division, Multifamily Rental Licenses for 6819 Red Top Road for the years 1970 through 2014, which consistently show six apartments on the property. Prince George's County did not require rental licenses prior to 1970.
3. Affidavit of Michael E. Trageser citing property management between 1998 and 2001 and property ownership from 2010 to 2014.
4. Affidavit of Ronald L. Lenkin indicating knowledge of the subject property while managing other Red Top Road properties.
5. M-NCPPC PGAtlas aerial photos of the site covering the period of time from 1965, 1977, 1984, 1993, 1998, 2000, 2005, and 2006. Each of these photos shows the existing building located on the site in its present configuration.
6. A Maryland Department of Assessments and Taxation record indicating the structure was built in 1953.
7. Prince George's County Circuit Court Land Records property deed.
8. A site plan of the subject property was submitted that contains a comparison of the regulations in effect when the apartments were built to current regulations. The site plan shows building locations, setbacks, parking, and pedestrian connections.

DISCUSSION

The evaluation of 6819 Red Top Road is based on the zoning in place at the time of development construction in 1953 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 January 1964), 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 six multifamily dwelling units. 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 January 1, 1964 was six units on a total of 0.25 acre. The current maximum density only allows three units. 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 and pedestrian access to the development is provided via Red Top Road and

pedestrian walkways throughout the complex. District Council Resolution 82-1970 waived the off-street parking requirements for this property.

In staff's opinion, the above evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1953. The letter from WSSC indicates that a service account serving the property was activated on April 1, 1953. There is no indication of service interruption to the property. Additional evidence, which consists of apartment license applications, aerial photographs, and affidavits from Michael E. Trageser and Ronald L. Lenkin demonstrate that the property has continuously operated since the nonconforming use began in January 1964 when the density regulations in the R-18 Zone were changed and in October 1968 when bedroom percentages were adopted.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, staff concludes that the subject apartments were constructed in accordance with the requirements of the Zoning Ordinance in effect prior to January 1, 1964. 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 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 Washington, with Commissioners Geraldo, Washington, Bailey and Hewlett voting in favor of the motion, and with Commissioner Shoaff absent at its regular meeting held on Thursday, November 20, 2014, in Upper Marlboro, Maryland.

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

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

PCB:JJ:IT:arj