THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
www.pgplanning.org

PGCPB No. 2020-51

File No. CNU-53400-2019

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-53400-2019, Crescent Square Apartments, requesting Certification of a nonconforming multifamily 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 April 2, 2020, the Prince George's County Planning Board finds:

1. **Location and Field Inspection:** The subject property, addressed as 42-54 Crescent Road, Greenbelt, Maryland, is zoned Multifamily Medium Density Residential (R-18) and Townhouse (R-T), and is also subject to the Planned Community (R-P-C) Zone. The property is located on the south side of Crescent Road, west of its intersection with Gardenway Court. The site is known as Parcel 17, containing 1.17 acres, and is recorded among the Prince George's County Land Records in Liber 42881 at folio 152. The site is developed with two multifamily buildings, including a 30-unit building within the R-18-zoned portion of the property and a 12-unit building within the R-T-zoned portion of the property. The site is served by a variable-width asphalt driveway located partially on-site, which provides access from Gardenway Court, a 50-foot right-of-way. Both buildings are served by a system of pedestrian pathways. The site plan shows that there are 26 parking spaces in the vicinity of the site, located on- and off-street. However, the plan indicates that no spaces are provided specifically for the buildings on the subject site. It is noted that the existing multifamily buildings are part of a larger scheme of multifamily buildings which surround the subject site.

   Planning staff conducted a site visit on March 2, 2020; the existing site conditions are consistent with the site plan submitted by the applicant.

2. **Surrounding Uses:** The site is bound to the southwest by open space owned by the City of Greenbelt, located in the Open Space (O-S) Zone; to the southeast are residential townhouse units in the R-T Zone, as well as another City-owned open space in the O-S Zone; to the northeast is Gardenway Court, with additional townhouses in the R-T Zone and additional City-owned open space in the O-S Zone beyond; to the northwest are Crescent Road and Centerway Road, with commercial uses in the Commercial Shopping Center (C-S-C) Zone beyond. All of the surrounding uses are also in the R-P-C Zone.

   Several other multifamily dwellings in the vicinity of the subject site have been previously certified as nonconforming multifamily dwellings. These are listed below:

   - CNU-4012-2015, Strathcona Apartments: Located on Parcel 64 of the Greenbelt Parcels, approximately 750 feet south of the subject site, approved 04/16/15

- CNU-28517-11, Lawrence Apartments: Located on Block O of the Greenbelt Co-op, approximately 1,110 feet southwest of the subject site, approved 03/08/12

- CNU-11640-11, Park Crescent Apartments: Located on Parcels 1 and 2, of the Greenbelt Commercial and Apartment Area, immediately west and south of the subject site, approved 05/30/12

3. **History:** The subject property was placed in the R-18, R-T, and R-P-C Zones at the time of adoption of the Zoning Map in 1957. According to the Maryland State Department of Assessments and Taxation database, the two buildings were constructed in 1937.

   The following information was derived from the applicant's statement of justification, received December 10, 2019, and incorporated by reference herein; documentation submitted by the applicant; and from the permit history of the site, as it relates to the existing use.

   a. **1937:** Structures are built.

   b. **1953:** The Greenbelt Cooperative purchases the town of Greenbelt from the federal government.

   c. **June 5, 1957:** The first Zoning Map is adopted for the area. The property is placed in the R-18, R-T, and R-P-C Zones. At this time, the apartment buildings become nonconforming.

   d. **1990:** The Langley Park, College Park, and Greenbelt Master Plan (October 1989) and Sectional Map Amendment (May 1990) retain the property in the R-18, R-T, and R-P-C Zones.

   e. **November 14, 2019:** A Use and Occupancy (U&O) Permit application (Permit #53400-2019-0) for the property is filed. This is the first U&O permit on record for the subject property.

   f. **January 16, 2020:** The subject CNU application is accepted.

4. **Request:** The applicant requested a CNU for two multifamily buildings constructed in 1937, when the property was not subject to the requirements of the Zoning Ordinance. The nonconforming status began on January 1, 1957, when the property came into the regional district and was subject to zoning requirements.

   In 1957, the Zoning Ordinance required a minimum net lot area requirement of 1,800 square feet per dwelling unit in the R-18 Zone and one parking space per dwelling unit. Multifamily dwellings were prohibited in the R-T Zone. The existing site only contains 1,216 square feet of lot area per dwelling unit (based on the total acreage) and only includes five parking spaces wholly off-street.

Current development regulations allow 20 dwelling units per acre in the R-18 Zone, generally prohibit multifamily dwellings in the R-T Zone, and require 2 parking spaces per dwelling unit, necessitating the subject application.

5. **Site Data Summary:**

Zone:	R-18/R-T/R-P-C
Acreage:	1.17 acres
Use:	Multifamily Residential
Total Units:	42
Site Density:	35.8 dwelling units/acre
Lot Coverage:	9,839 sq. ft.

6. **Certification Requirements:** Section 27-107.01(a)(166) of the Zoning Ordinance defines a nonconforming use as:

(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.

The applicant provided information setting forth that the use was lawfully established prior to the zoning regulations and, therefore, requested certification as a nonconforming use.

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:

Section 27-244

(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 is not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division). Any person making use of or relying upon the certification that is violating or has violated any conditions thereof, or that the use for which the certification was granted is being, or has been exercised contrary to the terms or conditions of such approval shall be grounds for revocation proceedings in accordance with this Code.

The applicant provided documentary evidence, in order to demonstrate that the existing multifamily building was lawfully established, which is discussed further.

(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.

The applicant filed U&O Permit 53400-2018-U on November 14, 2019, 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.

Along with the evidence provided in the History findings of this resolution, the application and accompanying site plan, the applicant submitted the following documentary evidence in support of criterion A and B:

a. Income tax records filed for the property, identified as rental apartments, from 1981 to 2018.

b. Gas, water, and sewer bills from September 2019.

c. Various property maintenance invoices and estimates dated June 11, 2019, April 10, 2019, August 30, 2019, September 16, 2016, January 12, 2016, November 29, 2018, and October 1, 2018.

d. Affidavits from the property manager and two residents indicating operation of the site as an apartment building for the last 18 years, collectively.

e. A letter from Washington Suburban Sanitary Commission (WSSC) indicating continued water and sewer services to the site since 1999. This letter also indicates the current WSSC account number was activated in 1966 and that archival limitation prevents WSSC from providing earlier records.

f. A property rental log from October 2019.

g. A letter from the City of Greenbelt indicating apartment rental licensure for the property from 2019 to 2020 and that there are no outstanding property maintenance complaints.

h. The Maryland State Department of Assessment and Taxation (SDAT) record identifying the site, indicating the use as apartments and that primary structure was built in 1937.

The evidence provided demonstrates the multifamily use existed prior to 1957. There is no evidence or permit history suggesting any lapse in use has occurred.

(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;

The submitted site plan, along with the application, notes the exact nature, location, size, and use of the property. The SDAT record indicates the subject property is recorded by deed among the Prince George's County Land Records in Liber 42881 at folio 152.

(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.

The applicant does not possess any prior U&O permit for the site. Accordingly, certification of the nonconforming use must be determined by the Prince George's County Planning Board.

(f) Planning Board review.

(1) Required hearing.

(A) If a copy of a valid use and occupancy permit is not submitted with the application, if the documentary evidence submitted is not satisfactory to the Planning Board's authorized representative to prove the commencing date or continuity of the use, or if a public hearing has been requested by any party of interest challenging the commencing date and/or continuity of the use, the Planning Board shall conduct a public hearing on the application for the purpose of determining whether the use should be certified as nonconforming.

A valid U&O permit was not submitted; therefore, the applicant requested a public hearing before the Planning Board and the Planning Board's approval for certification of a non-conforming use for the existing multifamily use.

The required findings of the Planning Board are further described in Section 27-244(f)(4)(A), as follows:

(4) Planning Board Action

(A) The Planning Board may decide to either grant or deny certification of the use as nonconforming. If it decides to certify that a nonconforming use actually exists and has continuously operated and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.

The Department of Permitting, Inspections and Enforcement indicated that the City of Greenbelt provides the applicable inspections concerning the subject property. A letter from the City of Greenbelt was provided by the applicant, which indicates that there are no outstanding violations for the property.

DISCUSSION

The evaluation of 42-54 Crescent Road is based on the lack of zoning regulations in place at the time of development in 1937 and a separate evaluation of the current R-18 and R-T/R-P-C zoning requirements of the property. The development exceeds the current allowable density of 20 dwelling units per acre in the R-18 Zone and does not conform the uses permitted in the R-T Zone; hence, the request for a CNU was filed.

Archiving limitations for available utility and permit records have prevented the applicant from obtaining additional proof of establishment and continuous operation since the date of nonconformity, which is out of the owner's control. However, the majority of the buildings surrounding the subject property were all built within the same time period (all reflected on 1938 aerial imagery) as a collective multifamily development schematic. Surrounding multifamily buildings have also received CNU approvals, bolstering the position that the multifamily dwellings are legally existing. The available records, coupled with the development history and nonconforming certification of the surrounding properties, is enough to establish that the use has legally existed, that the applicant has supplied all available documentation to demonstrate continuous use, and thus should be certified as nonconforming.

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 buildings, Crescent Square Apartments, located at 42-54 Crescent Road, Greenbelt, Maryland, were not subject to any zoning requirements when constructed in 1937. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since 1957 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 Geraldo, with Commissioners Washington, Geraldo, Bailey, Doerner and Hewlett voting in favor of the motion at its regular meeting held on Thursday, April 2, 2020, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 23rd day of April, 2020.

Elizabeth M. Hewlett
Chairman

By Jessica Jones
Planning Board Administrator

EMH:JJ:EDC:nz

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC Legal Department
Date: April 7, 2020