



CERTIFICATION OF NONCONFORMING USE 26297-2003-U

Application	General Data
Project Name: Antoinette Gardens Apartments Location: Intersection of Benning Road and Boones Hill Road, Known as 1211 Benning Road Applicant/Address: Antoinette Gardens LTD Partnership 1211 Benning Road Capitol Heights, Maryland 20743 Correspondent Vernell B. Arlington O'Malley, Miles, Nylen & Gilmore, P.A. 11785 Beltsville Drive, 10 th Floor Calverton, MD 20705	Date Accepted 10/1/03
	Planning Board Action Limit N/A
	Plan Acreage 6.66
	Zone R-18/R-10/C-S-C
	Dwelling Units 197
	Square Footage N/A
	Planning Area 75A
	Tier Developed
	Council District 07
	Municipality N/A
	200-Scale Base Map 202SE4

Purpose of Application	Notice Dates
Certification of 197 Nonconforming Apartments	Adjoining Property Owners Previous Parties of Record Registered Associations: (CB-12-2003) 08-14-03
	Sign(s) Posted on Site 10-10-03

Staff Recommendation			Staff Reviewer: Elsabett Tesfaye
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		

November 6, 2003

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner

SUBJECT: **Certified Nonconforming Use Application No. 26297-2003-U**

REQUEST: **Certification of 197 Nonconforming Apartments**

RECOMMENDATION: **APPROVAL With Conditions**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date indicated above. The Planning Board also encourages all interested persons to request to become a person of record in this application. Requests to become a person of record should be made in writing and addressed to the Development Review Division at the address indicated above. Please call 301-952-3530 for additional information.

FINDINGS:

- A. **Location and Field Inspection:** The subject property is located at the intersection of Benning Road and Boones Hill Road. It comprises approximately 6.66 acres of land and is improved with a 197-unit apartment development known as the Antoinette Gardens Apartments. The property is located in the R-18 Zone (Parcel 20, lots 10-17), C-S-C Zone (Portion of Lot 23), George J. Bradbury Division), and R-10 Zone (Lots 24-29, Block 62 and Lots 26-37, Block 63, Greater Capitol Heights Subdivision). The R-18 and R-10 portions of the property are separated by Benning Road. Moreover, the apartment buildings in the R-18 Zone are located on two sites separated by Boones Hill Road. Similarly, the two buildings in the R-10 Zone are also located on two sites, separated by Balboa Avenue. The C-S-C portion is a small piece of land located at the southwestern corner of the property. This portion of the property is wooded and, for all practical purposes, is treated as part of the R-18-zoned portion of the property.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-18, R-10, C-S-C	R-18, R-10 and C-S-C
Use(s)	Apartments	Apartments
Acreage	6.66	6.66
Units	197	197

- C. **History:** A portion of the property, Lots 10-17 and parcel 20, were placed in the R-18 Zone on November 29, 1949. The remainder of the property (lots 24-29, block 62, and lots 26-37, block 63) was rezoned from R-55 and C-1 to R-10 with the approval of ZMAs-3272, 3335 and 3467, in 1959. In 1960, the Board of Appeals granted a variance of 10 feet from the rear yard setback requirement for Lots 24-29, Block 62. Again in 1984, the Board of Appeals granted variances (net lot area, rear yard setback, green area and lot width requirements) for the development on Lots 24-29, Block 62. In 1983, the Planning Board granted a Certification of Nonconforming Use, application no. 53344-83-2 (parking, bedroom percentage and density requirements), for an apartment building on Parcel 20. The 1986 sectional map amendment (SMA) for Suitland, District Heights and vicinity rezoned lot 23 (George J. Bradbury Division) from R-18 to C-S-C and retained the remaining portions of the property in the R-18 and R-10 Zones.
- D. **Master Plan Recommendation:** The 1985 *Approved Master Plan for Suitland, District Heights and Vicinity* recommends the property for residential development at urban density (12 dwelling units per acre).
- E. **Request:** The applicant is seeking a consolidated certification of a 197-unit apartment complex (the Antoinette Gardens Apartments) that does not meet current zoning standards regarding bedroom percentages, density, parking and loading requirements, minimum lot area, green area, and setback requirements.

The apartment complex consists of the following:

No. of Buildings	Total No. of Units	Lots/Parcels	Zone
3	38	Lot 10-17 and P/O 23	R-18/C-S-C
7	113	Parcel 20	R-18

1	31	Lots 28-37 (Block 63)	R-10
1	15	Lots 24-29 (Block 63)	R-10

- F. **Surrounding Uses:** The immediate area surrounding the property is characterized by residential developments, mostly single-family dwellings on small lots (R-55), and some apartments (R-18, R-10 and R-35 Zones, with commercial uses located along both sides of Marlboro Pike in the C-S-C and C-M Zones.
- G. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate zoning 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** sets forth the specific requirements:
1. **In general, 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) certifies that the use is really nonconforming and not an illegal use.**
 2. **Application for Use and Occupancy Permit:**
 - a. **The applicant shall file for a use and occupancy permit.**
 - b. **Along with the application and accompanying plans, the applicant shall provide the following:**
 - (1) **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.**
 - (2) **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.**
 - (3) **Specific data showing:**
 - (i) **The exact nature, size and location of the building, structure and use.**
 - (ii) **A legal description of the property.**
 - (iii) **The precise location and limits of the use on the property and within any building it occupies.**

- (4) **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.**

H. **Analysis:** Due to the split zoning of the development, the various parcels must be viewed as two major sections, separated east from west by Benning Road. The western section is in the R-18 Zone. It was developed in 1948 with 151 units. The eastern section is in the R-10 Zone. It was developed in the early 1960s with 46 units.

The following table indicates how the western section of the development conforms with previous (1948) and current requirements of the R-18 Zone:

1948 Requierments	Lots 10-17 and 23: 38 units	Parcel 20: 113 units
Bedroom Percentages	N/A	N/A
Density 69.7 units/acre	Conforms—developed at 61.88 units/acre	Conforms—developed at 25 units per acre.
Parking	N/A	

Current Requirements	Lots 10-17 and 23: 38 units	Parcel 20: 113 units
Bedroom Percentages: ≤30% 3-Bedroom apts.	Exceeds by 55.8% or 21 units	N/A
≤20% 2-Bedroom apts.		Exceeds by 20.2% or 23 units
Density: ≤ 12 units/acre	Developed at 61.86 units/acre	Developed at 25.97 units/acre
Parking	Exempt: 31 Provided	Exempt: 73 Provided

The following table indicates how the eastern section of the development conforms with the previous (1960) and current requirements of the R-10 Zone:

1960 Requirements	Lots 24-29 Block 62: 15 units	Lots 28-37 Block 63: 31 units
Bedroom Percentages 40% 2-Bedroom apts.	Short by 2.35 unit/acre	N/A
Density: 43.56 units/acre	Developed at 41.21 units/acre	Exceeds—developed at 38.55 units/acre
Parking Spaces: 15 Total parking spaces	Short by 4 spaces	N/A
31 Total parking spaces	N/A	Short by 23 spaces

Current Requirements	Lots 24-29 Block 62: 15 units	Lots 28-37 Block 63: 31 units
Bedroom Percentages 40% 2-Bedroom apts.	Exceeds by 13.3% or 2 units	Conforms—developed at 33.3% or 10 units
Density: 48 units/acre	Conforms—developed at 46 units/acre	Exceeds—developed at 4 units/acre
Parking Spaces: 34 Total parking spaces	Short by 23	N/A

Although the eastern and western sections were initially developed independently and at different times, they have been linked together under a series of consolidated apartment licenses issued since 1989. Furthermore, the overall development is combined in terms of ownership, management, marketing, this application, and ultimately, one comprehensive use and occupancy permit.

There are three primary issues that must be considered in the requested certification, including the development's conformance with density, bedroom unit percentages, and parking requirements. As for density, the evidence demonstrates that the western section conformed to the maximum permitted density of 69.7 units per acre in effect at the time of construction in 1948. The two parcels that compose this section were developed at the 61.88 and 25 units per acre.

Unfortunately, the density issue is not as clear for the eastern section. Although it is evident that this section conforms substantially to the current density maximum of 48 units per acre, it is also clear that the actual density of Block 63 is 49.23 units per acre, thus exceeding the maximum permissible number of units by one unit. Therefore, although the applicant is requesting the certification of 197 units overall, only 196 can actually be certified. However, the applicant can also petition the District Council to validate the current apartment license as a permit issued in error to retain the additional 197th unit.

As for bedroom unit percentages, the evidence demonstrates that the development preceded the effective date of these requirements. The western section of the site was developed in 1948, and the eastern section was developed in 1960. However, the current requirements for bedroom unit percentages were not in effect until 1968. The current development is comprised of 2 efficiency, 69 one-bedroom, 98 two-bedroom, and 28 three-bedroom units.

Concerning parking spaces, a total of 101 are required and 123 are provided. Although off-street parking was not required in 1948 when the western section was constructed, 104 spaces were provided. Conversely, 46 spaces were required when the eastern section was constructed in 1960, but only 19 were provided. However, Section 27-573 allows for the use of off-site parking facilities when located within a distance of 500 feet, as in the instant case. Although this situation may not be the most desirable from a functional perspective, it nevertheless meets the requirements of the Ordinance.

The submitted site plan is comprised of two sheets, each depicting the western and eastern sections of the development, respectively. A third sheet should also be added, indicating that the subject multifamily use, including its buildings and all other improvements, are placed on and part of one overall development. The sheets shall be labeled as 1 of 3, 2 of 3 and 3 of 3. Furthermore, the applicant should note that future efforts to subdivide or otherwise sever any portion of this development from its current holdings of 6.66 acres will require the approval of parking departures for the newly created or severed portions. In addition, a revised site plan will be required for this certification file.

Also related to the site plan, the Permit Review Section indicates that the eight-foot-tall trash enclosure on Lot 13, in front of 1205 Boones Hill Road, does not meet the setback requirements. Therefore, either the height must be reduced to at least six feet or the trash enclosure must be relocated to meet the 30-foot street setback or side yard requirement. Otherwise, a variance must be obtained.

I. Documentary Evidence

The applicant has submitted the following documentation to demonstrate conformance with the requirements for certification:

1. A copy of rental license applications from the Prince George's County Community Standards Division from 1970 to the present. The license applications are made for individual buildings from the early 1970s to the late 1980s. The applications for the period between 1989 and 2000 were for consolidated licenses for total dwelling units ranging from 196 to 198.
2. Copies of Planning Board resolution PGCPB 83-213. The Planning Board approved the certification of a nonconforming use on Parcel 20 by this resolution.
3. Copy of Resolution No. 242-1959 for rezoning application A-3467. The Commissioners of Prince George's County adopted the rezoning from R-55 to R-10 of Lots 24 through 29, Block 62.
4. Copy of Permit 3339-84U, Appeal No. 1544. A 1960 decision of the Board of Appeals to approve a variance of ten feet of the rear yard of Lots 24 through 29, Block 62.
5. A 1965 aerial photo. The photo shows that all of the multifamily buildings that are the subject of this application were in existence in 1965.
6. A letter from the Washington Suburban Sanitary Commission (WSSC) verifying a "continuous use." The letter provides account activation dates (from 1948 to 1971), earliest available meter set date (1978 to 1987) and earliest available bill record date (1995) for six accounts with addresses at Balboa Avenue, Benning Road and Boones Hill Road.

CONCLUSION:

Based on the evidence submitted by the applicant and the lack of contradictory evidence from other sources, staff concludes that 196 multifamily dwellings were constructed in accordance with the requirements of the Zoning Ordinance for the R-18 and R-10 Zones that were in effect prior to 1948 and 1960. The documentary evidence also demonstrates the continued use of the property since that time. Therefore, it is recommended that Application No. CNU-26297-2003 be APPROVED for 196 multifamily dwellings, subject to the condition that prior to the issuance of permits, the site plan shall be revised to include the following:

1. A third sheet shall be added indicating that the subject multifamily use, including its buildings and all other improvements are placed on and part of one overall development. The sheets shall be labeled as 1 of 3, 2 of 3, and 3 of 3.
2. The height of the trash enclosure on Lot 13 at 1205 Boones Hill Road shall be lowered to at least six feet or the enclosure shall be relocated to comply with the 30-foot street setback or side yard requirements. Otherwise, a variance must be obtained.