



Note: Staff reports can be accessed at www.mncppc.org/pgco/planning/plan.htm.

Certified Nonconforming Use

CNU-28517-11

Application	General Data	
<p>Project Name: Lawrence Apartments</p> <p>Location: South side of Crescent Road, approximately 250 feet west its intersection with Southway and 203 feet east of its intersection with Westway.</p> <p>Applicant/Address: Lawrence Properties, LLC 21441 Pacific Boulevard, Suite 200 Sterling, VA 20166</p> <p>Property Owner: Lawrence Properties, LLC 21441 Pacific Boulevard, Suite 200 Sterling, VA 20166</p>	Planning Board Hearing Date:	03/08/12
	Staff Report Date:	02/17/12
	Date Accepted:	02/03/12
	Planning Board Action Limit:	N/A
	Plan Acreage:	1.26
	Zone:	R-18 & R-P-C
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	1
	Planning Area:	67
	Tier:	Developed
	Council District:	04
	Election District	21
	Municipality:	Greenbelt
200-Scale Base Map:	211NE07	

Purpose of Application	Notice Dates	
Certification of a nonconforming use for a 48-unit, garden-style apartment complex.	Informational Mailing	09/02/11
	Acceptance Mailing:	02/02/12
	Sign Posting Deadline:	02/07/12

Staff Recommendation		<p>Staff Reviewer: Ivy Thompson Phone Number: 301-952-4326 E-mail: Ivy.Thompson@ppd.mncppc.org</p>	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
X			

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Zoning Supervisor

FROM: Ivy R. Thompson, Senior Planner

SUBJECT: **Certified Nonconforming Use Application No. CNU-28517-11**

REQUEST: **Certification of a nonconforming use for an existing 48 –unit, multifamily, garden-style apartment complex.**

RECOMMENDATION: **APPROVAL**

NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of March 8, 2012. The Planning Board also encourages all interested persons to request to become a person of record for this application.

Requests to become a person of record should be made in writing and addressed to The Maryland-National Capital Park and Planning Commission, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Please call 301-952-3530 for additional information.

FINDINGS:

A. **Location and Field Inspection:** The subject property is located on the south side of Crescent Road, approximately 250 feet west of its intersection with Southway and 203 feet east of its intersection with Westway in the City of Greenbelt. The site is developed with a two-building, three-story, brick garden apartment complex. Building one, 12–16 Crescent Road, is developed with 18 units and building two, 18–26 Crescent Road, has 30 units. The subject property contains 48 multifamily units on 1.26 acres. There is no vehicular access to the development. Pedestrian access is provided via ingress/egress on Crescent Road.

B. **Development Data Summary**

	EXISTING	PROPOSED
Zone	R-18/ R-P-C	Unchanged
Acreage	1.26 total	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Site Density	37.8	Unchanged
Bedroom Percentages Efficiency & 1 BR	48 (100%)	Unchanged
Lot Coverage	1,152 s.f/d.u.	Unchanged

C. **History:** The buildings, known as 12–26 Crescent Road in Greenbelt, Maryland, were constructed as a 48-unit garden-style apartment complex in 1937 at a density of 37.8 dwelling units per acre when Old Town Greenbelt was under federal ownership. Off-street parking was not a requirement to serve the property at that time, so it was not provided. In 1953, the cooperative purchased the Town from the federal government; however, a new zoning plan was not adopted for the area until June 5, 1957, which is when the apartment complex became nonconforming. When the property came into the Maryland-Washington Regional District (Regional District) in 1957, the Planned Community (R-P-C) Overlay Zone was imposed upon the City of Greenbelt; the property thus existed within the overlay zone, but was also subject to the underlying Multifamily Medium Density Residential (R-18) Zone requirements. In 1957, the R-18 Zone allowed a maximum density of 12 dwelling units per acre and the R-P-C Overlay Zone allowed a maximum density of 20 dwelling units per acre, however, the property had an existing density of 37.8 dwelling units per acre. Also in 1957, 96 off-street parking spaces were required to serve the property, but none were provided. The site plan includes a table that indicates the Zoning Ordinance requirements for the R-18 Zone on June 5, 1957 when the Zoning Ordinance took effect, the current Zoning Ordinance requirements, and where the complex conforms or deviates from those requirements. There are no previously issued use and occupancy permits for the apartments. The applicant applied for a Use and Occupancy Permit (28517-2011) and was denied because no prior use and occupancy permits for the property could be found; therefore, a Planning Board public hearing is required.

D. **Request:** The applicant requests certification of an existing 48-unit, multifamily, garden-style apartment complex that was built in 1937, when the property was not subject to the requirements of the Zoning Ordinance. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began June 5, 1957 when the property came into the Regional District and was subject to the Zoning Ordinance. Based on the current standard of square footage per dwelling unit for the

R-P-C Overlay Zone, only 25.3 units are allowed in the development. The apartment complex, however, has 48 dwelling units, as the subject property was not part of the Regional District and not subject to the requirements of the Zoning Ordinance at the time of construction in 1937.

E. **Surrounding Uses:** The site is surrounded by the following uses:

North— Property zoned Rural Residential (R-R) developed with a library and open space along Crescent Road.

West— Property zoned Open Space (O-S) surrounded by Townhouse (R-T).

East— Property zoned Open Space (O-S) surrounded by Townhouse (R-T).

South— Property zoned Townhouse (R-T) and Open Space (O-S).

F. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either pre-date 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)(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) or the District Council certifies that the use is nonconforming and not illegal.

(b)(1) The applicant shall file an application for a use and occupancy permit in accordance with Division 7 of this Part.

(b)(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;

(2) A legal description of the property; and

(3) 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 12-26 Crescent Road apartments were constructed in 1937. When the applicant applied for a use and occupancy permit in 2011, the Planning Information Services staff could not verify that the 12-26 Crescent Road apartments were in continuous use in accordance with requirements in effect at the time the property became a part of the Regional District in 1957 because 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, June 5, 1957, 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 print out of the Maryland Department of Assessments and Taxation for Prince George's County, Real Property Data Search, which indicates that the building is assessed as a multi-unit apartment building since the 1972 property transfer. (Attachment 1)
2. The Town of Greenbelt Record Plan of Utilities, created by the U.S. Department of Agriculture Farm Security Administration of the United States of America, Suburban Division, dated 1938, illustrating the subject properties. (Attachment 2)
3. Memorandums from Mary Hampton, The Maryland-National Capital Park and Planning Commission (M-NCPPC), Permit Review Section, dated October 7, 2011 and June 14, 2010 citing the zoning requirements and the requirement for certification of nonconforming use approval by the Planning Board for the subject property. (Attachment 3)
4. A rental housing license and inspections from the Prince George's County Department of Inspections and Permits from April 17, 1970, 1972, 1982, 1984, 1986, 1988, 1990, and 1992.

A temporary Use and Occupancy Permit, 28517-2011-00 (pending this application). (Attachment 4)
5. The City of Greenbelt, Maryland Apartment Licenses issued in October 1995, January 1996, November 1996, December 1996, October 1997, December 1997, November 1998, October 1999, November 2000, November 2002, October 2008 and 2009. (Attachment 5)
6. A letter from Washington Suburban Sanitary Commission (WSSC), Credit Department, indicating December 1, 1973 as the date the account was opened for 12-26 Crescent Road, Greenbelt, Maryland and that the accounts are currently active. (Attachment 6)

7. An Affidavit of Memorandum from Judith Holland, 20 A Crescent Road, Greenbelt, MD providing evidence of the subject property being used as a multi-unit apartment building since June 5, 1957. (Attachment 7)
8. An Affidavit of Memorandum from William Holland, 9-E Southway, Greenbelt, MD providing evidence of the subject property being used as a multi-unit apartment building since June 5, 1957. (Attachment 8)
9. An Affidavit of Memorandum from Kathleen S. McFarland, 3 Fayette Place, Greenbelt, MD providing evidence of the subject property being used as a multi-unit apartment building since June 5, 1957. (Attachment 9)

DISCUSSION

In staff's opinion, the above evidence which consists of signed affidavits from long time residents, Prince George's County Department of Inspections reports dating back to 1970, approved City of Greenbelt apartment licenses dating back to 1996, a letter from WSSC citing continuous service since 1973, state assessment information citing the property being assessed as a multifamily building since 1972, and the Town of Greenbelt Record Plan of Utilities showing the properties in 1938 supports the applicant's claim that the 12-26 Crescent Road apartment complex has been in continuous operation since being constructed in 1937 and when the use became nonconforming in 1957. The subject property has a total of 48 multifamily dwelling units. The site was developed when it was not subject to Zoning Ordinance requirements. The nonconforming use began in 1957 when property came into the Regional District and the R-P-C Overlay Zone was imposed upon the City of Greenbelt (subject to the underlying zone of R-18). The allowable density on the subject site in 1957 per the R-P-C Overlay Zone imposed at that time was 25.3 dwelling units per acre on a total of 1.269 acres.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, staff concludes that the subject property, the 12-26 Crescent Road apartments, were not subjected to the requirements of the Zoning Ordinance 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. Therefore, it is recommended that Certified Nonconforming Use CNU-28517-11 be APPROVED as a certified nonconforming use.