PGCPB No. 17-49 File No. CNU-35221-2016

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use Application No. CNU-35221-2016 requesting certification of a nonconforming use for an existing four-unit apartment building that was constructed in 1936, 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 March 16, 2017, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:**

The subject property, 3802 38th Avenue, is located on the southwest side of 38th Avenue where it intersects Parkwood Street, approximately 800 feet west of Bladensburg Road. The site is developed with a two story, four-unit apartment building with a basement on a 3,815-square-foot lot. The subject building adjoins two other apartment buildings to the east and west. Access to the site is via a 25-foot-long concrete walkway from 38th Avenue. There is no designated parking available on the site. However, some street parking is available on Parkwood Street located to the south of the subject site and access to public transportation is available on 38th Avenue.

B. **Development Data Summary:**

	EXISTING	**APPROVED**
Zone	R-18	Unchanged
Acreage	0.088	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	4	Unchanged
Site Density	45.5 dwelling units/acre	Unchanged
Lot Coverage	2.7%	Unchanged

C. **History:** The site was recorded as Lot 42, Block 3, of Cottage City in April 1936. The subject apartment building was constructed in 1936. At the time of the building construction, the property was zoned Residential "C" and was in conformance with the regulations in effect. The property was placed in the Multifamily Medium-Density Residential (R-18) Zone on November 29, 1949. The development standards at that time permitted the allowable density based on 625-square-foot lot area per dwelling unit for a four-unit apartment building. 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 thus permitting only two dwelling units.

D. **Master Plan Recommendation:** The 1994 *Approved Master Plan and Sectional Map Amendment for Planning Area 68* retained the subject property in the R-18 (Multifamily Medium Density Residential) Zone.

E. **Request:** The applicant requests certification of an existing, four-unit apartment building that was constructed in 1936. At that time, the property was subject to the requirements of the Residential "C" Zone classification. Because development regulations were changed or adopted after the use was lawfully established, the density of the multifamily apartment building became nonconforming. Based on the current standard of square footage per dwelling unit for the R-18 Zone, the existing building exceeds the current maximum density; thus, a request for certification of nonconforming use approval is required.

F. **Surrounding Uses:** The site is primarily surrounded by single-family residential development in the One-Family Detached Residential (R-55) Zone except the two contiguous multifamily apartment buildings attached to the subject apartment compound and another multifamily apartment building to the south (on Parkwood Street).

The site is surrounded by the following uses:

North— 38th Avenue and across the right-of-way is a vacant Cottage City Fire Department building and other single-family detached houses zoned R-55.

South— A multifamily apartment building zoned R-18, Parkwood Street and single-family detached houses zoned R-55.

East— Contiguous to the subject building are multifamily apartment buildings zoned R-18 and a residential property zoned R-55.

West— A multifamily apartment building zoned R-18.

G. **Definition of a Nonconforming Use:**

(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.

Certification Requirements: Certification of a nonconforming use requires that certain findings be made. Section 27-244 of the Prince George's County 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 (except as provided for in Section 27-246 and Subdivision 2 of this Division).

(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 one hundred eighty (180) consecutive calendar days between the time the use became nonconforming and the date when the application is submitted, or that conditions on nonoperation for more than one hundred eighty (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 applicant's documentation, the multifamily building, 3802 38th Avenue, was constructed in 1936. When the applicant applied for a use and occupancy permit it was determined that a certification of nonconforming use is required because the multifamily apartment building exceeds the current maximum density. The Property Standards Division could not verify that the multifamily apartment building was 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) 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. Prince George's County Rental Housing Licenses dated May 1997–May 1999 and May 2005–May 2007.

2. Prince George's County Rental Housing applications dated May 1997–May 1999 and March 2001–May 2003.

3. Affidavit of Ms. Rose Arthur indicating she has lived at the property beginning in 1973 to the present and affirming that 3802 38th Avenue operates as multifamily property.

4. Lease Agreement for unit #4 dated April 2006 and April 2009, and unit #2 dated July 2009 and March 2010.

5. A letter dated June 1, 1998, from Mr. Martin Tonder, Property Manager to Mr. Obichere, owner, indicating improvements necessary to rent 3802 38th Avenue, Apt. #3.

6. A letter dated October 18, 2016, from the Washington Suburban Sanitary Commission (WSSC) stating that the address has had an active WSSC service since October 1, 1942 and that the water and sewer services have been in use and available to this property since at least April 7, 1995.

7. Washington Suburban Sanitary Commission water and sewer bills and payment documents dated May 2000–June 2000.

8. A Maryland Department of Assessments and Taxation record indicating the structure was built in 1936.

9. Alban Home Inspection Service dated August 6, 1998.

10. Maryland Department of the Environment Lead Inspection Service dated July 31, 2001.

11. PEPCO service application dated May 8, 1997 and PEPCO deposit receipt dated June 13, 1997.

12. Workmanship and Materials warranty by JA Skillman Company dated May 18, 1993.

13. 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, and pedestrian connections.

In addition, a review of The Maryland-National Capital Park and Planning Commission (M-NCPPC) Planning Department aerial imagery of the site 1938 through 2016 shows the location of the existing building on the site in its present configuration.

DISCUSSION

The above evidence supports the applicant's claim that the subject multifamily dwelling was constructed in conformance with the standards in place in 1936 and thus, the multifamily use of the property was legally established. Also, the multifamily rental property has been in continuous operation since the nonconforming use began on January 1, 1964, when the density regulations in the Residential "C" changed from a minimum 1,800-square-foot lot area per dwelling unit to a minimum of 2,000-square-foot lot area per dwelling unit in the current R-18 Zone. The allowable density on the subject site prior to the change was four units on a total a 0.088 acre. After that date, a maximum of two units are allowed on a site at that size.

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 subject multifamily apartment building was constructed in accordance with the requirements of the Zoning Ordinance in effect prior to 1949 and thus the use was legally established at that time. There is also no evidence to suggest a lapse of continuous use of the multifamily residential property since the building became nonconforming on January 1, 1964.

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 Bailey, with Commissioners Geraldo, Bailey, Doerner, and Hewlett voting in favor of the motion, and with Commissioner Washington absent at its regular meeting held on Thursday, March 16, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 6th day of April 2017.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator

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