THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-4366
www.mncppc.org/pgco

PGCPB No. 15-135

File No. CNU-39600-2015

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed CNU-39600-2015, Addison Chapel Apartments, requesting certification of nonconforming use for a 320-unit multifamily apartment building in the R-18 Zone 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 December 17, 2015, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property, identified as Addison Chapel Apartments, is located at the intersection of Addison Road and Elkwood Lane in Capital Heights, Maryland. The Addison Chapel Apartments are a twenty- seven building, four-story, brick apartment complex. All of the buildings front Elkwood Lane. The multifamily garden-style apartment development has a total of 320 dwelling units on 8.62 acres. The property is zoned Multifamily Medium-Density Residential (R-18). There is an existing playground located in the center of the complex. There are pedestrian walkways along Elkwood Lane and Addison Road. Vehicular access to the development is via Elkwood Lane and Addison Road. A total of 264 on-site parking spaces are provided. The property has access to Metrobus route (V14), which provides public transit service to residents. No loading spaces are required.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	R-18	Unchanged
Acreage	8.62	Unchanged
Use(s)	Multifamily dwellings	Unchanged
Total Units	320	Unchanged
Site Density	37.12 units/acre	Unchanged
Lot Coverage	146,951.95 s.f. (39.487)%	Unchanged
Bedroom Percentages		Unchanged
1BR	156 (48.75%)	
2 BR*	164 (51.25%)	
**Unused bedroom percentages for three or more bedroom apartments may be added to the maximum allowed percentages for two-bedroom apartment units.*		

C. **History:** The Addison Chapel Apartments were constructed as a 320-unit garden-style apartment complex in 1949 at a density of 2,249 square feet per dwelling units. A total of 264 off-street parking spaces were provided. The complex, built per the 1942 Zoning Ordinance, became nonconforming on November 29, 1949 when the property was placed in the Multifamily Medium Density Residential (R-18) Zone via a comprehensive rezoning. The property was rezoned to Multifamily High Residential (R-10) via Zoning Map amendment (ZMA)-3408 in 1959 when a section of the property was sold to the Prince George's County Board of Education for the adjacent elementary school. It was later rezoned back to R-18 in 1977 per the Model Neighborhood Sectional Map Amendment approved November 8, 1977. The subject site is non-conforming with respect to parking (1949), bedroom percentages (October 1, 1968) and site density (1977). The site plan includes a table that indicates the Zoning Ordinance requirements of the "Residence C" Zone classification in place at the time the apartments were constructed, the current R-18 Zoning Ordinance requirements, and where the complex conforms to or deviates from those requirements. Bedroom percentages and parking are also provided. There are no previously issued use and occupancy permits for the Addison Chapel Apartment complex. The applicant applied for a Use and Occupancy Permit (396000-2015) and was denied because no prior use and occupancy permits for the property could be located; therefore, a public hearing before the Planning Board is required.

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

North— Addison Road and property zoned Mixed Use Transit (MXT).

West— Elkwood Lane and property zoned R-18 developed with multifamily buildings and property zoned Commercial Miscellaneous (C-M) commercial warehouse.

East— Property zoned One-Family Detached Residential (R-55), developed with Robert Gray Elementary, owned by the Prince George's County Board of Education.

South— Properties zoned R-55 improved with single-family detached residences.

E. **Request:** The applicant requests certification of an existing 320-unit multifamily apartment complex that was constructed in 1949, when the property was subject to the requirements of the "Residence C" Zone classification. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began on November 29, 1949 when the property was rezoned to the R-18 Zone and further became non-conforming on October 1, 1968, when bedroom percentages were adopted and in November 8, 1977 when the property was rezoned to R-18. Based on the current standard of square footage per dwelling unit for the R-18 Zone, only 166 dwelling units are permitted. The apartment complex, however, has 320 dwelling units, which is what was permitted according to the "Residence C" Zone regulations in place at the time of construction in 1949.

F. **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—According to the applicant's documentation, the Addison Chapel apartments were constructed in 1949. When the applicant applied for a use and occupancy permit, the Planning staff could not verify that the Addison Chapel Apartments were 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(s) the subject property 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. Aerial maps for the years 1965, 1968, 1980, 1993, 1998, 2000, 2005, 2007, 2009, and 2014.

2. Maryland State Department of Assessments and Taxation Property record for 4801 Addison Road (2.88 acres) and 1401 Elkwood Lane (5.75 acres).

3. Prince George's County Department of Environmental Regulations Property Standards Group Rental Housing License and application issued August 11, 2011 and expiring August 11, 2013.

4. Prince George's County Department of Environmental Regulations Property Standards Division letter dated January 9, 1985 regarding Addison Chapel Apartments (M687) license #1507 issued August 11, 1983 and expiring August 11, 1985

5. Final Plat 5-50047, Addison Chapel Apartments, dated May 25, 1950.

6. Site Plans for the Addison Chapel Apartments, Inc. Project #2 dated August 10, 1949 with WSSC approved stamp Dated August 15, 1949 illustrating the Plat Plan, the Floor Plans. The (Building) Elevations, Typical Details, Various Details, and Elevations of Units 10-18.

7. A letter dated January 18, 1985 from Charles Bennett regarding the land use on the property.

8. A parking diagram of the property.

9. Prince George's County property deed, book 2408, page 253, dated December 17, 1959.

10. Maryland National Capital Park and Planning Building Permit #36189 dated June 14, 1950 for Addison Chapel Apartments for Parcel A that predated 1949 and built in conformance to the 1942 Zoning Ordinance.

11. Site Plan for the property.

12. Building Location Plat for the property.

13. Affidavit dated October 6, 2015 signed by Harold Mangold attesting to the construction and use of the subject property as a multifamily development.

14. Prince George's County Department of Environment (DER) job card #39600-2015-00 for a Use & Occupancy permit.

15. Deed dated December 17, 1959 conveying property to the Prince George's County Board of Education (BOE).

16. 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 the Addison Chapel Apartments is based on both the "Residence C" zoning in place at the time of development construction in 1949 and a separate evaluation based upon the R-18 zoning requirements to reflect the current zoning of the property, which became effective in 1977. The development exceeds the current allowable density in the R-18 Zone, does not meet current parking requirements and exceeds the allowable bedroom percentages, hence the request for certification of a nonconforming use. There is no previous record of a prior use and occupancy permit.

The above evidence supports the applicant's claim that the apartment complex site was developed in compliance with the "Residence C" zoning requirements when it was constructed in 1949, not subject to the R-18 Zoning Ordinance requirements. The August 10, 1949 plans for the property with the Washington Suburban Sanitary Commission (WSSC) approval stamp dated August 15, 1949 and the Building permit issued by the Maryland-National Capital Park and Planning Commission (M-NCPPC) dated June 14, 1950, for Section 2 of the property demonstrates that the complex was constructed in conformance with the regulations at the time. The subject development has a total of 320-multifamily dwelling units. The property deed, property site plan, record plat and assessment information also provide additional support to the construction claim.

The Rental licenses for the property and letters from the Prince George's County Department of Environment Property Standards Division, along with the aerial photos demonstrate that the property has

continuously operated since the nonconforming uses began and also supports the applicant's claim that the Addison Chapel apartment complex has been in continuous operation since being constructed in 1949.

CONCLUSION

Based on the evidence submitted by the applicant, together with the lack of contradictory evidence from other sources, the Planning Board concludes that the subject property, the Addison Chapel Apartments, was constructed in accordance to the requirements of the 1942 Zoning Ordinance in effect when constructed in 1949. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since their construction 1949, and when Zoning Regulations changed in 1968 and 1977 making the use nonconforming. Therefore, it is recommended that Certification of Nonconforming Use Application No. CNU-39600-2015 be APPROVED as a certified nonconforming use.

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 @ the above-noted application, subject to the following conditions:

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 and Hewlett voting in favor of the motion, and with Commissioner Shoaff temporarily absent at its regular meeting held on Thursday, December 17, 2015 in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 7th day of January, 2016.

Patricia Colihan Barney
Executive Director

Jessica Jones

By Jessica Jones
Planning Board Administrator

PCB:JJ:IT:ydw

APPROVED AS TO LEGAL SUFFICIENCY
M-NCPPC Legal Department
Date 12/21/15