

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-27927-12, Hampshire Village Apartments, requesting certification of a nonconforming use for a 200-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 March 19, 2015, the Prince George’s County Planning Board finds:

A. **Location and Field Inspection:** The subject property known as 1335 Merrimac Drive, Langley Park is located on the south side of Merrimac Drive between its intersection with New Hampshire Avenue and 14<sup>th</sup> Avenue. The Hampshire Village Apartments is a ten building, three-story, multifamily garden-style apartment development with 200 multifamily apartment units on a combined 7.45 acres. The property is zoned Multifamily Medium-Density Residential (R-18). Vehicular access to the development is via Merrimac Drive, Edwards Place and 14<sup>th</sup> Avenue. There are pedestrian walkways throughout connecting the apartment buildings. A total of 144 off-street parking spaces are provided via parking lots located off of Merrimac Drive, Edwards Place and 14<sup>th</sup> Avenue. The property has access to multiple bus routes, which provides public transit service to residents. No loading spaces are required.

B. **Development Data Summary:**

	<b>EXISTING</b>	<b>APPROVED</b>
Zone	R-18	Unchanged
Acreage	7.45	Unchanged
Use(s)	Multifamily dwelling	Unchanged
Total Units	200	Unchanged
Site Density	26.84 units/acre	Unchanged
Lot Coverage	33.8%	Unchanged
Bedroom Percentages		Unchanged
1BR	103 (51.5%)	
1 BR w/ Den / 2 BR*	97 (48.5%)	
<i>*Unused bedroom percentages for three or more bedroom apartments may be added to the maximum allowed percentages for two-bedroom apartment units.</i>		

C. **History:** The Hampshire Village Apartments were constructed in approximately 1950 as a 200-unit garden-style apartment complex as part of what was originally planned as the Langley Park Apartments. Based on a lot size of 7.45 acres, the site provides a density of 26.84 units per

acre which exceeds the current maximum density of the R-18 Zone which has a maximum density of 12 units per acre. The apartment complex is in compliance with bedroom percentages.

Zoning Map Amendment (ZMA) 1,246 rezoned a large tract land from Residential “A” to Residential “C” and Commercial “D” and created the Residential Planned Community (RPC) for the McCormack Goodhart Estate on December 15, 1948. Zoning Map Amendment (ZMA) 1,246 was conditioned that “the portion of the applicant’s property, for which apartment house zoning is requested, be placed in the Residential “C” Zone, subject to the provisions of the R-18 Zone as set forth in the proposed Zoning Ordinance.” The density requirement in the 1949 Zoning Ordinance was 1,800 square feet of lot area per dwelling units. Based on the lot size, a maximum of 180 dwelling units would have been permitted, however, 200 dwelling units exist. One parking space per dwelling unit was required, therefore, based on 200 units a minimum of 200 parking spaces were required and only 144 parking spaces are provided.

Since Hampshire Village was part of a planned community that was most likely reviewed and approved as one large development and now many of the apartments are now under separate ownership, it is assumed that the apartments were constructed in compliance with the RPC regulations in effect at the time of construction.

The complex became nonconforming when the density changed from 1,800 square feet to 2,000 square feet per net lot area per unit on January 1, 1964. The site plan includes a table that indicates the Zoning Ordinance requirements of the 1949 “Residence C” Zone classification, the current R-18 Zoning Ordinance requirements, and where the complex conforms to or deviates from those requirements. The applicant applied for a Use and Occupancy Permit for the Hampshire Village Apartment complex and was denied because no prior Use and Occupancy permits for the property could be found; therefore, a public hearing before the Planning Board is required.

- D. **Request:** The applicant requests certification of an existing, 200-unit multifamily garden-style apartment complex, that was built in 1950. Because development regulations were changed or adopted after the apartment use was lawfully established, the complex became nonconforming. The nonconforming status began on January 1, 1964, when the density changed from 1,800 square feet to 2,000 square feet per net lot area per unit. Based on the current standard of square footage per dwelling unit for the R-18 Zone, only 162 dwelling units are permitted. The apartment complex, however, has 200 dwelling units, which is what was permitted at the time of construction in 1950.
- E. **Surrounding Uses:** The site is surrounded by multifamily dwellings zoned R-18 and the Langley Park Plaza Shopping Center zoned Commercial Shopping Center (C-S-C):

**North—** Merrimac Drive and property zoned Multifamily Medium-Density Residential (R-18) improved with apartment complexes.

**West—** 14<sup>th</sup> Avenue and Property zoned R-18 improved with multifamily residences.

**East—** New Hampshire Avenue and properties zoned R-18 improved with multifamily residences.

**South—** The Langley Park Plaza Shopping Center zoned C-S-C.

- 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 the use began. Second, there must be no break in operation for more than 180 days since the use became nonconforming.

Section 27-244(a)(1), and (b)(1) and (2)(A)-(D) of the 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.**

**(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 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;**
  - (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**—Per the submitted documentation, the Hampshire Village Apartment complex was constructed approximately in 1950. When the applicant applied for a Use and Occupancy permit, the Permit Review Section and Property Standards staff determined that there are no prior issued Use and Occupancy permits for the existing apartment complex. 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.

**Section 27-244(f)**

- (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.**
  - (2) **Application for certification.**
    - (A) **Whenever the Planning Board will hold a hearing on a certification of the use as nonconforming, the applicant shall complete the appropriate form provided by the Planning Board.**

**(3) At least seven (7) calendar days prior to the public hearing, the Planning Board shall send written notice of the date, time, and place of the hearing to the applicant and to all persons of record.**

**(4) Planning Board action.**

The applicant submitted the following documentary evidence in support of the application:

1. A letter dated November 12, 2014, from the Washington Suburban Sanitary Commission (WSSC) stating that the complex has had active WSSC account since September 1, 1950. WSSC noted water and sewer services has been in use and available since January 20, 1988.
2. Prince George's County Rental Housing Licenses, 2005–2015.
3. PGATLAS data file citing the year built as 1950.
4. Hampshire Village Apartment Income and Expense Questionnaires 2004–2011.
5. M-NCPPC PGAtlas aerial photos of the site covering the period of time from 1965, 1977, 1980, 1984, 1993, 1998, 2000, 2005, 2006, 2007, 2009, and 2011. Each of these photos shows the existing buildings located on the site in its present configuration.
6. 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 Hampshire Village Apartments was developed as part of a Residential Planned Community that was constructed approximately 1950, however, the development exceeds the current allowable density in the R-18 Zone hence the request for certification of a nonconforming use. The use became nonconforming on January 1, 1964, when the density changed from 1,800 square feet to 2,000 square feet of net lot area per unit. There are no previous records of prior use and occupancy permits for the apartment community. The Hampshire Village Apartment complex has a total of 200-multifamily dwelling units. The allowable density on the subject site on January 1, 1964, per the R-18 Zone imposed at that time, was 12-dwelling units per acre. 144 parking spaces are provided, no loading spaces are provided.

The evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1950. The evidence, which consists of the Prince George's County Rental Housing Licenses, a letter from Washington Suburban Sanitation Commission (WSSC) citing the meter installation date and a continuous service statement, PGAtlas aerial photos of the subject property,

letters from numerous tenants, and other qualifying documents, supports the applicant's claim that the Hampshire Village Apartment complex was constructed and has been in continuous operation since 1950. The site was developed in compliance with the RPC zoning requirements in place at the time when it was constructed, not subject to the R-18 Zoning Ordinance requirements.

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 Hampshire Village Apartments, was constructed subject to the requirements of the RPC when constructed. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since the use 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.

\* \* \* \* \*

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 absent at its regular meeting held on Thursday, March 19, 2015, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 16th day of April 2015.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator