

R E S O L U T I O N

WHEREAS, the Prince George’s County Planning Board has reviewed CNU-42913-13, Lexington Apartments, requesting certification of a nonconforming use for a 56-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 May 22, 2014, the Prince George's County Planning Board finds:

A. **Location and Field Inspection:** The subject property is identified as Lot 1, Block 2 in the New Hampshire Estates Subdivision located in the northwestern quadrants of the intersections of Merrimac Drive and Tahona Drive. Lexington Apartments is a four building, three-story, multifamily garden-style apartment development, known as 8105, 8107, 8107, 8911 Tahona Drive, has a total of 56-dwelling units on a combined 1.9 acres. The property is zoned Multifamily Medium Density Residential (R-18). Vehicular access to the development is via Merrimac Drive and Tahona Drive. There are pedestrian walkways along Merrimac Drive and Tahona Drive. A total of 50 parking spaces are provided via parking lots located off of Merrimac Drive and Tahona Drive. 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	1.9 total	Unchanged
Use(s)	Multifamily Apartments	Unchanged
Site Density	29.46 d.u./a	Unchanged
Bedroom Percentages Lot One 1BR 2 BR*	22 (39.3%) 34 (60.7%)	Unchanged
<i>*Unused bedroom percentages for three or more bedroom apartments may be added to the maximum allowed percentages for two-bedroom apartment units.</i>		
<b>Lot Coverage</b>	<b>16,000 s.f./d.u.</b> 82,789 s.f./5.17 d.u.	<i>Unchanged</i>

C. **History:** The Lexington Apartments were constructed as a 56-unit garden-style apartment complex in 1948 at a density of 132-dwelling units per acre. There are a total of 50 parking spaces provided. The complex became nonconforming on November 29, 1949, when the property was placed in the Multifamily Medium-Density Residential (R-18) Zone via a comprehensive rezoning,

when the density changed from 625 square feet to 1,800 square feet per net lot area per unit. 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. The complex does not meet the requirements for lot coverage (density), green area, front and rear-yard depth and bedroom percentages. There are no previously issued use and occupancy permits for the Lexington Apartment complex. The applicant applied for a Use and Occupancy Permit (42913-2013) 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, 56-unit, multifamily, garden-style apartment complex that was built in 1948, 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. Based on the current standard of square footage per dwelling unit for the R-18 Zone, only 45 dwelling units (5.17 d.u./acre) are permitted. The apartment complex, however, has 56 dwelling units, which is what was permitted according to the Residence “C” Zone regulations in place at the time of construction in 1948. The apartment complex also exceeds the percentage of two bedroom units by 10.7 percent.

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

**North—** Merrimac Drive and north of Merrimac Drive property zoned One-Family Semi-Detached Residential and Two-Family Detached Residential (R-35) improved with residences.

**West—** Property zoned R-18 improved with multifamily residences known as Langley Gardens.

**East—** Tahona Drive and east of Tahona Drive are properties zoned R-18 improved with multifamily residences.

**South—** Property zoned R-18 improved with multifamily residences known as Langley Gardens.

- 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 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**—According to the applicant's documentation, the Lexington Apartments were constructed in 1948 and operational in 1949. When the applicant applied for a use and occupancy

permit in 2013, the Planning Information Services staff could not verify that the Lexington 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 it became nonconforming (November 29, 1949) and that it had been in continuous operation since that time.

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

1. The Deed for Lexington Apartments, 8105 Tahona Drive, Silver Spring, Maryland 20903 (Exhibit A).
2. Prince George's County Department of Environmental Resources letter citing no record of any Certificates of Use and Occupancy for the subject property, 8105, 8107, 8109, 8111 Tahona Drive, Silver Spring, MD 20903 (Exhibit B).
3. M-NCPPC Permit staff review comments from Mary Hampton citing the nonconforming use certification requirement due to the density requirement (Exhibit C).
4. A letter from WSSC citing WSSC account activation dates of May 1, 1949 and July 1, 1949 (Exhibit D).
5. A letter from PEPCO citing account service dates since 1975 (Exhibit E).
6. A notarized statement from Hans Peter Gates citing continuous operation of the Lexington Apartments (Exhibit F).
7. A notarized statement from Ann Marie Gates citing continuous operation of the Lexington Apartments (Exhibit G).
8. A notarized statement from Joseph Julian citing continuous operation of the Lexington Apartments (Exhibit H).
9. A notarized statement from Gloria Julian citing continuous operation of the Lexington Apartments (Exhibit I).
10. A notarized statement from Kurt Denchfield citing continuous operation of the Lexington Apartments (Exhibit J).
11. Apartment License Application, Prince George's County Department of Inspections and Permits, paid June 23, 1970 via check 7546 (Exhibit K).

12. Prince George's County Department of Inspections and Permits, License to Rent Apartments, for Lexington Apartments, 8105 -8111Tahona Drive, Silver Spring, MD 20903 (Exhibit L).
13. Prince George's County Rental Housing License M-0721, effective July 26, 2001 expiring July 26, 2003 (Exhibit M).
14. Prince George's County Rental Housing License M-0721, effective July 26, 2003 expiring July 26, 2005 (Exhibit N).
15. Prince George's County Rental Housing License M-0721, effective July 26, 2005 expiring July 26, 2007 (Exhibit O).
16. Prince George's County Rental Housing License M-0721, effective July 26, 2007 expiring July 26, 2009 (Exhibit P).
17. Prince George's County Rental Housing License M-0721, effective July 26, 2009 expiring July 26, 2011 (Exhibit Q).
18. Prince George's County Rental Housing License M-0721, effective July 26, 2011 expiring July 26, 2013 (Exhibit R).

## DISCUSSION

The evaluation of the Lexington 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 November 29, 1949. The development exceeds the current allowable density in the R-18 Zone and the allowable bedroom percentages, hence the request for certification of a nonconforming use. The use became nonconforming on November 29, 1949 when the density changed from 625 square feet to 1,800 square feet of net lot area per unit. There is no previous record of a prior use and occupancy permit.

Lot 1 has a total of 56 multifamily-dwelling units. The allowable density on the subject site on November 29, 1949, per the R-18 Zone imposed at that time, was 5.17-dwelling units per acre on a total of 1.9 acres. The complex provides 64.17 percent of the required green space and provides 25 feet of front yard and 25.5 feet of rear yard requirements. Vehicular access to the development is provided via Tahona Drive and Merrimac Drive and pedestrian walkways along both. A total of 50 parking spaces are provided. No loading spaces are required.

The above evidence which consists of the property deed, Prince George's County Rental Housing Licenses, Prince George's County Apartment License application, notarized statements from five stakeholders, a letter from Washington Suburban Sanitation Commission (WSSC) citing the meter installation date and a continuous service statement, a letter from Potomac Electric Power Company

(PEPCO) citing continuous service, and other qualifying documents, supports the applicant's claim that the Lexington Apartment complex has been in continuous operation since being constructed in 1949. The subject development has a total of 56-multifamily dwelling units. The site was developed in compliance with the Residence "C" zoning requirements 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, staff concludes that the subject property, the Lexington Apartments, was not subjected to the requirements of the Zoning Ordinance when constructed in 1948. There is also no evidence to suggest a lapse of continuous multifamily dwelling apartment use since November 29, 1949, when the use became nonconforming. Therefore, it is recommended that Certification of Nonconforming Use Application No. CNU-42913-2013 is 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 APPROVED 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.

\* \* \* \* \*

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 and Hewlett voting in favor of the motion, and with Commissioners Shoaff and Washington absent at its regular meeting held on Thursday, May 22, 2014, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 12th day of June 2014.

Patricia Colihan Barney  
Executive Director

By Jessica Jones  
Planning Board Administrator