

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed Certification of Nonconforming Use CNU-43544-2015 requesting certification of a nonconforming use for a 106-unit multifamily apartment complex in the Multifamily Medium-Density Residential (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 January 26, 2017, the Prince George's County Planning Board finds:

A. Location and Field Inspection:

The subject property is located on the east side of 14th Avenue and Langley Way. The Langley Terrace Apartments is a seven-building complex comprised of two- and three-story brick, multifamily, garden-style apartment buildings containing 106, one- and two-bedroom dwelling units on 4.507 acres. The property is zoned Multifamily Medium-Density Residential (R-18). Vehicular access to the development is via 14th Avenue and Langley Way. There are pedestrian walkways throughout the property connecting the apartment buildings. A total of 101 off-street parking spaces are provided in on-site parking lots located off 14th Avenue and Langley Way. On-street parking is also available along 14th Avenue. The property has access to multiple bus routes, which provides public transit service to residents.

B. Development Data Summary:

| | EXISTING | APPROVED |
|---------------------|----------------------|-----------------|
| Zone | R-18 | Unchanged |
| Acreage | 4.507 | Unchanged |
| Use(s) | Multifamily dwelling | Unchanged |
| Total Units | 106 | Unchanged |
| Site Density | 23.51 units/acre | Unchanged |
| Lot Coverage | 33.8% | Unchanged |
| Bedroom Percentages | | Unchanged |
| 1 BR | 54 (50.9%) | |
| 2 BR | 52 (49.1%) | |

C. History: The Langley Terrace Apartments were constructed in approximately 1950 as a 106-unit garden-style apartment complex as part of what was originally planned as the Langley Park Apartments. Based on a lot size of 4.507 acres, the site provides a density of 23.51 units per acre which exceeds the current maximum density in the R-18 Zone of 12 units per acre. The apartment

complex is in compliance with bedroom percentages. Zoning Map Amendment 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 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 unit. Based on the lot size, a maximum of 109-dwelling units would have been permitted, where 106 exist. One parking space per dwelling unit was required, therefore, based on 106 units, a minimum of 106 parking spaces were required and only 101 parking spaces are provided.

Since Langley Terrace was part of a planned community that was most likely reviewed and approved as one large development and now many of the apartments are 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 (U&O) for the Langley Terrace Apartment complex in 2015 and was denied because no prior U&O 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, 106-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 98-dwelling units are permitted. The apartment complex, however, has 106-dwelling units, which is what was permitted at the time of construction in 1950.

E. **Surrounding Uses:** The site is surrounded by multifamily dwellings in the R-18 Zone:

North— Property zoned R-18 improved with garden-style multifamily residences.

West— 14th Avenue and property zoned R-18 improved with garden-style multifamily residences.

East— Properties zoned R-18 improved with garden-style multifamily residences.

South— Properties zoned R-18 improved with garden-style multifamily residences.

- F. **Certification Requirements:** Certification of a nonconforming use requires that certain findings be made. First, the use must either predate the pertinent Zoning Regulations 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)(b)(1)(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 Langley Terrace Apartment complex was constructed in 1950. When the applicant applied for a U&O permit in 2015, the Permit Review Section and Property Standards staff determined that there are no prior issued U&O 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 certified affidavit from Mr. Stanley Zupnik, the Managing Director of Zupnik-Langley Park Associates LLC, confirming his family's ownership of the property and apartment complex since 1949.
2. M-NCPPC PGAtlas aerial photos of the site from 1965, 1977, 1980, 1984, 1993, 1998, 2000, 2005, 2006, 2007, 2009, 2011, and 2014. Each of these photos shows the existing buildings located on the site in the present configuration.
3. Affidavits from residents at Langley Terrace indicating their knowledge of the conduct of business on the property for the preceding 45–50 years.
4. Prince George's County Rental Housing Licenses from 1970 through 2016.
5. Corporate tax returns from 2001, 2002, 2003, 2004, and 2005 showing the applicant relied on the rental licenses and expended funds to maintain or repair the property.
6. A letter dated April 22, 2016, from the Washington Suburban Sanitary Commission (WSSC) stating that service was activated for the complex on September 1, 1950 and October 1, 1950. WSSC also noted water and sewer services has been in continuous use and available to the property since December 12, 1988.
7. 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.

G. Discussion:

The Langley Terrace Apartments were developed as part of a RPC that was constructed in 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 U&O permits for the apartment community. The Langley Terrace Apartment complex has a total of 106 multifamily, garden-style dwelling units where only 98 dwelling units were permitted as of January 1, 1964. A total of 101-parking spaces are provided where 106 spaces would have been required in 1950. 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, an affidavit from Mr. Stanley R. Zupnik, letters from tenants, tax

returns, and other qualifying documents, supports the applicant's claim that the Langley Terrace 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 with the exception of parking. The site lacks five parking spaces that would have been required in 1950. However, on-street parking is accessible on 14th Avenue and public transit is readily available in the immediate vicinity of the site.

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 Langley Terrace Apartments, was built in accordance 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, Doerner and Hewlett voting in favor of the motion at its regular meeting held on Thursday, January 26, 2017, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 16th day of February, 2017.

Patricia Colihan Barney
Executive Director

By Jessica Jones
Planning Board Administrator