



*Note: Staff reports can be accessed at [www.mncppc.org/pgco/planning/plan.htm](http://www.mncppc.org/pgco/planning/plan.htm).*

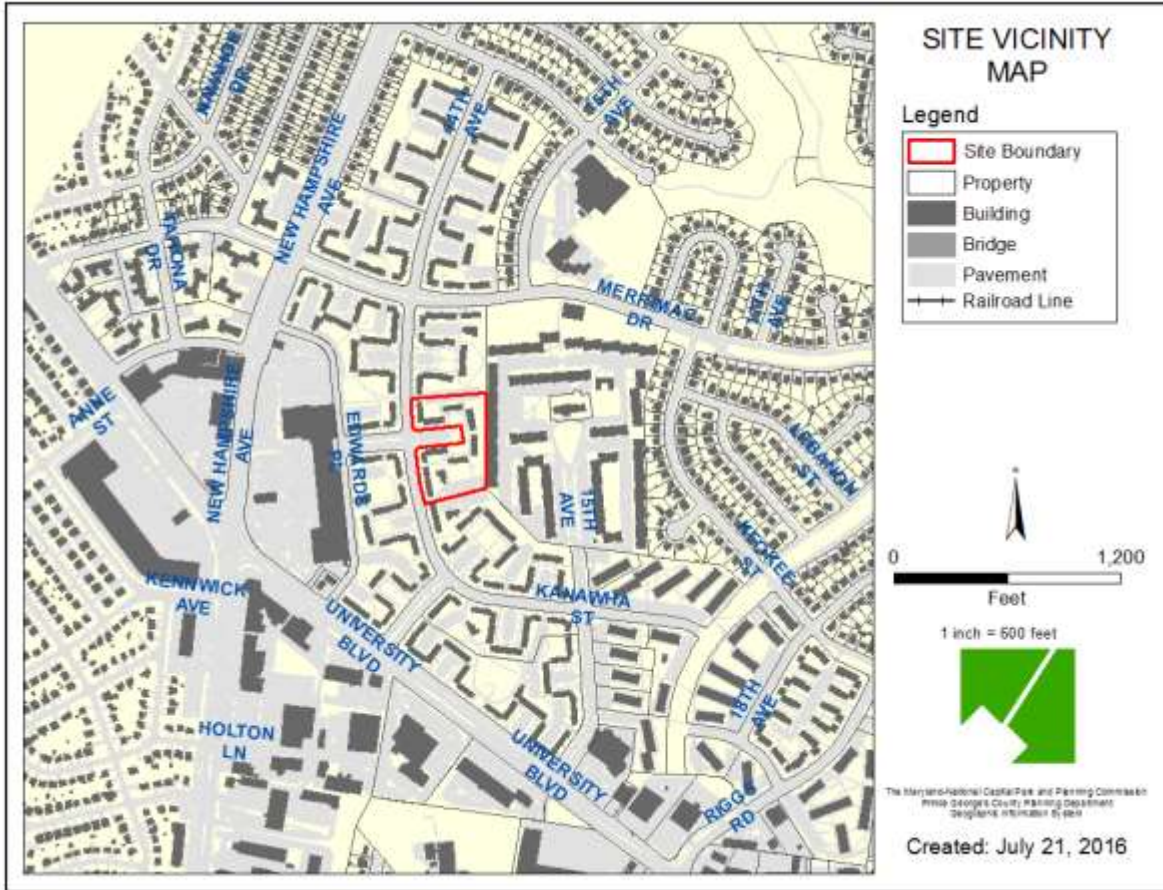
## Certification of Nonconforming Use

**CNU-43544-2015**

Application	General Data	
<b>Project Name:</b> Langley Terrace Apartments  <b>Location:</b> On the east side of 14 <sup>th</sup> Street, north and south of Langley Way.  <b>Applicant/Address:</b> Zupnik-Langley Park Associates, LLC 5330 Wisconsin Avenue, Suite 900 Chevy Chase, MD 20815  <b>Property Owner:</b> Zupnik-Langley Park Associates, LLC 5330 Wisconsin Avenue, Suite 900 Chevy Chase, MD 20815	Planning Board Hearing Date:	01/26/17
	Staff Report Date:	12/27/16
	Date Accepted:	12/01/16
	Planning Board Action Limit:	N/A
	Plan Acreage:	4.507 acres
	Zone:	R-18
	Gross Floor Area:	N/A
	Lots:	N/A
	Parcels:	1
	Planning Area:	65
	Council District:	02
	Election District	17
	Municipality:	N/A
	200-Scale Base Map:	240C65

Purpose of Application	Notice Dates	
Certification of a nonconforming use for a 106-unit multifamily apartment complex in the R-18 Zone.	Informational Mailing	07/21/16
	Acceptance Mailing:	11/22/16
	Sign Posting Deadline:	12/27/16

<b>Staff Recommendation</b>		<b>Staff Reviewer:</b> Christina Pompa, AICP <b>Phone Number:</b> 301-780-2222 <b>E-mail:</b> <a href="mailto:Christina.pompa@ppd.mncppc.org">Christina.pompa@ppd.mncppc.org</a>	
<b>APPROVAL</b>	<b>APPROVAL WITH CONDITIONS</b>	<b>DISAPPROVAL</b>	<b>DISCUSSION</b>
<b>X</b>			



THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board

VIA: Jimi Jones, Supervisor, Zoning Review Section, Development Review Division

FROM: Christina Pompa, Planner Coordinator, Zoning Review Section, Development Review Division

SUBJECT: **Certification of Nonconforming Use Application No. CNU-43544-2015**

REQUEST: **Certification of a nonconforming use for a 106-unit multifamily apartment complex in the R-18 Zone.**

RECOMMENDATION: **APPROVAL**

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NOTE:

The Planning Board has scheduled this application for a public hearing on the agenda date of January 26, 2017. The Planning Board also encourages all interested persons to request to become a person of record for this application.

Requests to become a person of record should be made in writing and addressed to The Maryland-National Capital Park and Planning Commission, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Please call 301-952-3530 for additional information.

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## FINDINGS

### A. Location and Field Inspection:

The subject property is located on the east side of 14<sup>th</sup> 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 14<sup>th</sup> 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 14<sup>th</sup> Avenue and Langley Way. On-street parking is also available along 14<sup>th</sup> Avenue. The property has access to multiple bus routes, which provides public transit service to residents.

### B. Development Data Summary:

	EXISTING	PROPOSED
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 (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 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 for the Langley Terrace Apartment complex in 2015 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, 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 Multifamily Medium-Density Residential (R-18) improved with garden-style multifamily residences.
- West—** Fourteenth 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 Use and Occupancy permit in 2015, 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 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 Residential Planned Community 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 use and occupancy permits for the apartment community. The Langley Terrace Apartment complex has a total of 106-multifamily garden-style 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. 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 14<sup>th</sup> 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, were 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. Therefore, it is recommended that Certification of Nonconforming Use Application No. CNU-43544-2015 be APPROVED as a certified nonconforming use.