



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

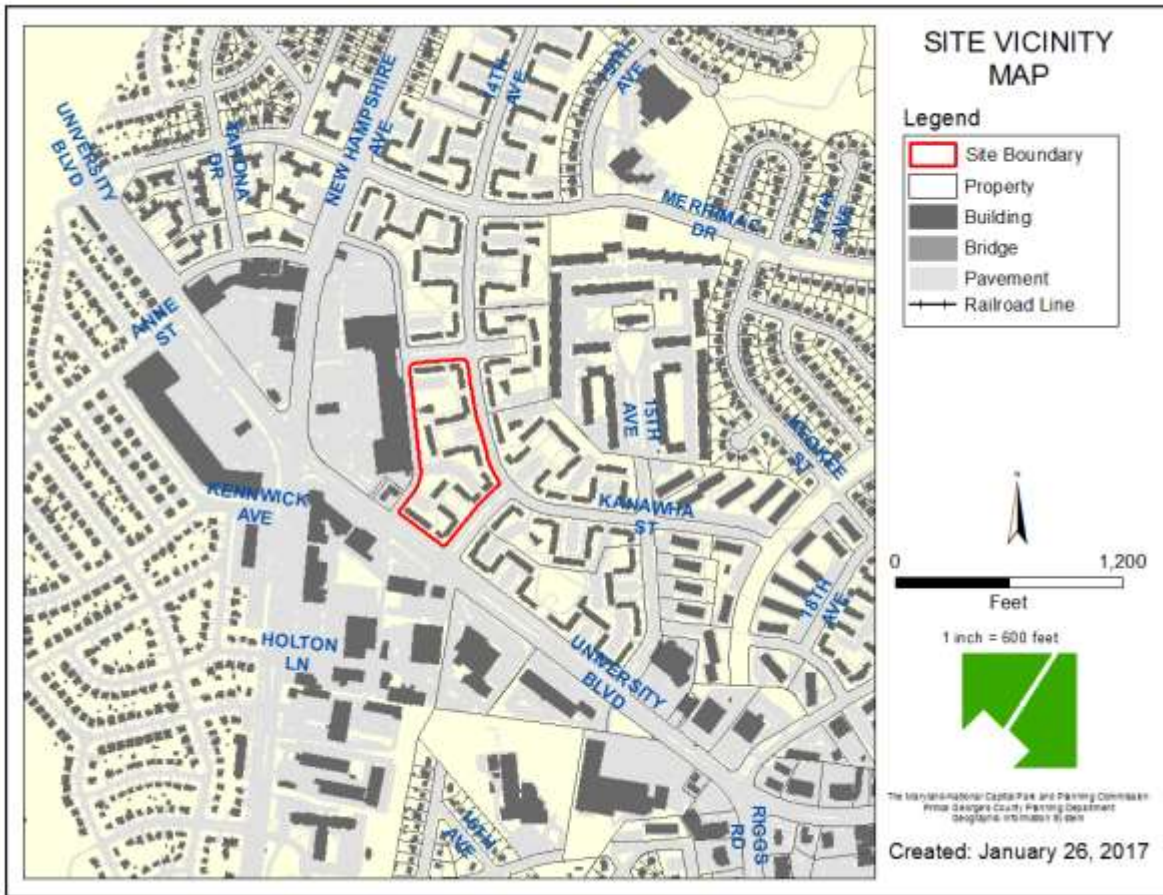
## Certification of Nonconforming Use

**CNU-59118-2016**

Application	General Data	
<b>Project Name:</b> Liberty Place Apartments  <b>Location:</b> On the west side of 14 <sup>th</sup> Street, south of Langley Way, north of University Boulevard.  <b>Applicant/Address:</b> Kay Apartment Communities 8720 Georgia Avenue, Ste. 410 Silver Spring, MD 20910  <b>Property Owner:</b> Langley E LLC 1919 M Street, NW, Ste. 320 Washington, DC 20036	Planning Board Hearing Date:	06/08/17
	Staff Report Date:	05/30/17
	Date Accepted:	04/25/17
	Planning Board Action Limit:	N/A
	Plan Acreage:	7.348 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:	209NE02 210NE02

Purpose of Application	Notice Dates	
Certification of a nonconforming use for a 178-unit multifamily apartment complex in the R-18 Zone, which exceeds the current maximum density.	Informational Mailing	02/01/17
	Acceptance Mailing:	04/13/17
	Sign Posting Deadline:	05/24/17

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



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

FROM: Christina Pompa, Acting Supervisor, Subdivision & Zoning Section  
Development Review Division

SUBJECT: **Certification of Nonconforming Use Application No. CNU-59118-2016**

REQUEST: **Certification of a nonconforming use for a 178-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 June 8, 2017. 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 west side of 14<sup>th</sup> Avenue, south of Langley Way and north of University Boulevard. The property is known as Parcel E, recorded in the plat records of Prince George's County at WWW 16-36. The Liberty Place Apartments is a ten-building complex comprised of two- and three-story brick multifamily garden-style apartment buildings containing 178, one- and two-bedroom dwelling units on 7.348 acres. The property is zoned Multifamily Medium-Density Residential (R-18). Vehicular access to the development is via 14<sup>th</sup> Avenue, Langley Way, and Edwards Place. There are pedestrian walkways throughout the property connecting the apartment buildings. A total of 145-off-street parking spaces are provided in on-site parking lots located off 14<sup>th</sup> Avenue and Edwards Place. On-street parking is also available along Langley Way, 14<sup>th</sup> Avenue, and Edwards Place. The property has access to multiple bus routes, which provides public transit service to residents.

### B. Development Data Summary:

	EXISTING	PROPOSED
Zone	R-18	R-18
Acreage	7.348	7.348
Use(s)	Multifamily dwelling	Multifamily dwelling
Total Units	178	178
Site Density	24.22 units/acre	24.22 units/acre
Bedroom Percentages		
1 BR	90 (50.5%)	90 (50.5%)
2 BR	88 (49.4%)	88 (49.4%)

- C. **History:** The Liberty Place Apartments were constructed in 1949 as a 178-unit garden-style apartment complex a part of which was originally planned as the Langley Park Apartments. Based on a lot size of 7.348 acres, the site provides a density of 24.22 units per acre, which exceeds the current maximum density in the R-18 Zone of 12 units per acre. The apartment complex conforms to the maximum bedroom percentage per Section 27-419(a)(1)(A) of the Zoning Ordinance. The unit mix is 90 one bedroom units (50.5%) and 88 two bedroom units (49.4%). The apartments do comply with bedroom percentages because there are no three bedroom units therefore all 10 % can be added to maximum number of two bedrooms for a maximum of 50. 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. 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 177.8 dwelling units would have been permitted, where 178 exist.

Since the Liberty Place Apartments were part of a Recreational Planned Community (RPC) that was most likely reviewed and approved as one large development but now under many separate ownership, it is assumed that the apartments were constructed in compliance with the RPC regulations in effect at the time of construction. This analysis is consistent with previous actions of the Planning Board in the certification of nonconforming uses on this site (CNU-27927-2012, (PGCPB Resolution No. 15-21)).

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. Currently, the maximum permitted density in the R-18 Zone is 12 units per acre, which would yield 88 total units. 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 Liberty Place Apartment complex in 2016 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, 178-unit multifamily garden-style apartment complex, that was built in 1949. 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 88 dwelling units are permitted. The apartment complex, however, has 178 dwelling units, where 177.8 were permitted at the time of construction in 1949. Staff would note that the rounding up of density to the next whole number is not inconsistent with prior practice for building permit site plans of projects developed in the 1950s and 1960s.
- 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.
- East—** Properties zoned R-18 improved with garden-style multifamily residences.
- South—** University Boulevard and commercial properties in Montgomery County.
- West—** Property zoned C-S-C containing the Langley Park Plaza.
- 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.

Sections 27-244(a)(1) and Section 27-244(b)(1)(2)(A)-(D) of the Zoning Ordinance set 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 one hundred eighty (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 one hundred eighty (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 Liberty Place Apartment complex was constructed in 1949. When the applicant applied for a Use and Occupancy permit in 2016, 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 non-conforming use site plan of the subject property was submitted as Exhibit # 1.
2. A copy of the October 7, 2016 assessment worksheet reflecting the date of construction as November 29, 1949 and SDAT sheet were jointly submitted as Exhibit #2.
3. Charles I. Kaplan's sworn affidavit that attests to family ownership since 1949 and operation of the existing 178-multifamily dwelling units since date of construction was submitted as Exhibit #3.
4. Washington Suburban Sanitary Commission (WSSC) letter dated July 11, 2016, confirming that services were activated on Liberty Place Apartments Section E on November 1, 1950 and a letter dated November 3, 1995, that is addressed to WSSC identifying the account numbers associated with Liberty Park Apartments Section E. These letters were submitted jointly as Exhibit #4.
5. Income tax returns were submitted as Exhibit #5 to verify the income that was generated from the operation of the 178-dwelling unit rental complex.
  - (1) 1952 U.S Individual Income Tax Return
  - (2) 1953 U.S Individual Income Tax Return
  - (3) 1954 U.S Individual Income Tax Return
  - (4) 1957 U.S Individual Income Tax Return
  - (5) 1958 U.S Individual Income Tax Return
  - (6) 1959 U.S Individual Income Tax Return
  - (7) 1960 U.S Corporation Income Tax Return
  - (8) 1961 U.S Corporation Income Tax Return
  - (9) 1962 U.S Corporation Income Tax Return
  - (10) 1980 Maryland Partnership Income Tax Return
  - (11) 1984 Maryland Partnership Income Tax Return
  - (12) 1985 U.S. Partnership Income Tax Return
  - (13) 1986 Maryland and U.S. Partnership Income Tax Return
  - (14) 1989 Maryland Partnership Income Tax Return
  - (15) 1993 U.S. Partnership Income Tax Return
  - (16) 1996 U.S. Partnership Income Tax Return
  - (17) 1997 U.S. Partnership Income Tax Return
  - (18) 1999 U.S. Partnership Income Tax Return

6. The April 14, 1958 IRS letter and accompanying reports of examination regarding the tax returns for 1952, 1953, 1954, and 1958 were submitted as Exhibit #6.
7. A copy of Langley E Associates, LLC financial statements reflecting operating expenses, profits and losses during the years of 1958–2015 were submitted as Exhibit #7.
8. The Applicant expended funds on the subject property to pay the property taxes as indicated on the Maryland State Department of Assessments and Taxation notices that were submitted as Exhibit # 8.
  - (1) County Real property tax receipt dated 9/30/1971
  - (2) 12/28/1979 Notice letter
  - (3) 10/05/1993 Notice letter
  - (4) 12/30/1994 Notice letter
9. Prince George’s County, Department of Environmental Resources Property Standards Division has issued multifamily housing licenses for 178 dwelling units located on the subject property from September 24, 1970 – March 1, 2016. The March 1, 2016 Prince George’s County Rental license is due for expiration on March 1, 2018. (Please note that the 1970-1998 apartment licenses reflect the old name of the apartments as Langley Park Section E. The 1998 – 2016 apartment licenses reflects the current name of the apartment as Liberty Place Apartments Section E.) These licenses were submitted as Exhibit #9.
10. The Applicant has expended funds on the subject property to maintain the apartment buildings. This is reflected in items identified and submitted as Exhibit 10.
  - (1) Department of Housing and Urban Development letter dated March 13, 1970
  - (2) Fuel Oil expense log for January 4, 1973 – November 8, 1974
  - (3) H.G. Smithy Company letter dated Mar. 31, 1978
  - (4) Langley E: Capital Improvements spreadsheet 1994
11. A copy of the 1981 income forecast spreadsheet that provided a projection for the income that would be derived from the residential complex in 1981 was submitted as Exhibit #11.
12. A copy of Liberty Place Apartments Section E’s 1984 annual budget report that identifies the income derived from renting the 178-dwelling units and operation costs including but not limited to property management fees, rental insurance fees, and rental maintenance expenses. The budget report is submitted as Exhibit #12.
13. The Applicant has expended funds on the subject property for the installation and operation of the complex’ laundry equipment. This is indicated in the applicant’s February 8, 1988 lease agreement with Solon Automated Services and was submitted as Exhibit #13.
14. A receipt verifying the purchase of a complete list of all adjoining property owners, registered associations and municipalities located within a mile of the subject property; an affidavit and an Informational Mailing letter that were mailed to all registered associations regarding Liberty Place Apartments’ Section E request for Certification of Nonconforming Use Application No. CNU-59118-2016. These were submitted as Exhibit #14.
15. M-NCPPC’s permit comments - M-NCPPC (Mary Hampton) reviewed the Use & Occupancy Permits for the properties. It was realized that certification of nonconforming use is necessary

for the Use and Occupancy Permits to be approved as the buildings currently exceed the current maximum density of the R-18 Zone, which is 12 units per acre. The Comments were submitted as Exhibit #15.

Exhibit 1 is included in the Planning Board slide show. Exhibits 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, and 15 are included as backup to this technical staff report. Exhibits 5 and 7 have not been included in the backup due to their voluminous nature, but are part of the record and are available for public inspection.

G. **Discussion:**

The Liberty Place Apartments were developed as part of a Residential Planned Community that was constructed in 1949, 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 Liberty Place Apartment complex has a total of 178-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 one dwelling unit per 2,000 square feet of net-lot area or 160 dwelling units. Under today's standards, allowable density has been further reduced to 12 dwelling units per acre or 88 dwelling units per acre. A total of 145-parking spaces are provided where 178 spaces would have been required in 1949. No loading spaces are provided. As indicated previously, the site was original constructed as a part of the Langley Park Apartments as set forth in previous actions of the Planning Board for certifications of other multifamily buildings within the development where parking was assumed as part of the overall development.

The overwhelming evidence supports the applicant's claim that the apartment complex has been in continuous operation since its construction in 1949. The evidence, which consists of Charles I. Kaplan's sworn affidavit that attests to family ownership since 1949 and continuous operation of the existing 178-multifamily dwelling units since the date of construction; a copy of the October 7, 2016 assessment worksheet reflecting the date of construction as November 29, 1949; extensive tax returns, financial statements, and correspondence from the Internal Revenue Service (IRS) dating back to 1952; information showing the applicant expended funds to maintain the apartment buildings; the Prince George's County Rental Housing Licenses; a letter from Washington Suburban Sanitary Commission (WSSC) citing the meter installation date and a continuous service statement, all support the applicant's claim that the Liberty Place Apartment complex was constructed and has been in continuous operation since 1949 and was developed in accordance with the Planned Community (R-P-C) zoning requirements in place at the time.

## CONCLUSION

Based on the overwhelming evidence submitted by the applicant, including Exhibits 1–15, and particularly the affidavit by Edward H. Kaplan, staff concludes that the subject property, the Liberty Place 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-59118-2016 be **APPROVED** as a certified nonconforming use in accordance with Section 27-244 of the Zoning Ordinance.