



The Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

Special Exception Westgate Apartments

SE-4852

REQUEST	STAFF RECOMMENDATION
Special exception to permit the enlargement of a certified nonconforming apartment building with an additional seven dwelling units.	With the conditions recommended herein: <ul style="list-style-type: none">• Approval of Special Exception SE-4852

Location: On the north side of MD 198 (Gorman Avenue), approximately 600 feet east of its intersection with Van Dusen Road.	
Gross Acreage:	9.22
Zone:	RMF-20
Prior Zone:	R-18
Dwelling Units:	225
Gross Floor Area:	95,502 sq. ft.
Lots:	0
Parcels:	1
Planning Area:	60
Council District:	01
Municipality:	None
Applicant/Address: Westgate at Laurel, LLC 3200 W. County Line Road Jackson, NJ 08527	
Staff Reviewer: Dominique Lockhart Phone Number: 301-952-3411 Email: Dominique.Lockhart@ppd.mncppc.org	



Planning Board Date:	10/20/2022
Planning Board Action Limit:	N/A
Staff Report Date:	10/04/2022
Date Accepted:	07/14/2022
Informational Mailing:	10/11/2021
Acceptance Mailing:	07/13/2022
Sign Posting Deadline:	N/A

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at http://www.mncppcapps.org/planning/Person_of_Record/. Please call 301-952-3530 for additional information.

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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
The Prince George's County District Council

VIA: Jeremy Hurlbutt, Supervisor, Zoning Review Section,
Development Review Division

FROM: Dominique Lockhart, Planner III, Zoning Review Section
Development Review Division

SUBJECT: Special Exception SE-4852
Westgate Apartments

REQUEST: Special exception to permit the enlargement of a certified nonconforming apartment
building with an additional seven dwelling units.

RECOMMENDATION: **APPROVAL with conditions**

NOTE:

The Planning Board has scheduled this application on the consent agenda for transmittal to the Zoning Hearing Examiner on the agenda date of October 20, 2022.

You are encouraged to become a person of record in this application. Requests to become Persons of Record should be submitted electronically by email to: ZHE@co.pg.md.us. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

SUMMARY:

A special exception is subject to the general findings for approval of all special exceptions contained in Section 27-317(a) of the prior Prince George's County Zoning Ordinance. Part 4 of the Zoning Ordinance also includes additional required findings for specific uses. Nonconforming buildings, structures, and uses are subject to the additional findings of Section 27-384 of the prior Zoning Ordinance. In support of the application, the applicant filed a statement of justification submitted July 13, 2022, incorporated by reference herein.

FINDINGS:

1. **Location and Site Description:** The subject property is located on the north side of MD 198 (Gorman Avenue), approximately 600 feet east of its intersection with Van Dusen Road. The property consists of 4 existing buildings, containing 218 dwelling units and a leasing office. The site is currently improved with a swimming pool and parking. The applicant is requesting to add 7 additional one-bedroom units for a total of 225 dwelling units. No changes to the exterior of the structure are proposed.
2. **History and Previous Approvals:** This application, to amend a certified nonconforming use through a special exception, was accepted by the Prince George's County Planning Department on July 14, 2022 and is being reviewed in accordance with the prior Zoning Ordinance, pursuant to Section 27-1900 of the Zoning Ordinance.

The subject property is located on Tax Map 6 in Grid B-1, consisting of Parcel A, and contains a total of 9.22 acres of land in the Residential, Multifamily-20 Zone. A final plat is recorded in Plat Book WWW 54, page number 82, and approved on December 2, 1964. Additional history of the subject property is noted below:

1965: The site plan is approved for construction of an apartment building. At the time of site plan approval, the Multifamily Medium Density Residential (R-18) Zone permitted 21.78 units per acre or 206 dwelling units.

1975: The R-18 Zone density decreased to 12 units per acre (Prince George's County Council Bill CB-114-1989), which would allow 213 dwelling units on the property.

1981: Portions of the subject property along MD 198 were conveyed to the Maryland State Highway Administration for road improvements. The gross acreage for the subject property decreased from 9.46 acres to 9.22 acres.

2000: A Certified Nonconforming Use Permit (41302-2000-U) is approved to allow 206 dwelling units and identifies additional development regulations.

2001: The Prince George's County District Council and the Zoning Hearing Examiner approves application ERR-180 (permit issued in error) for the validation of a rental license issued in error, to allow the 218 dwelling units that existed on the subject property.

3. **Neighborhood and Surrounding Uses:** The general neighborhood is bounded to the north by Sandy Spring Road and West Street, Tenth Street to the east, MD 198 to the south, and Van Dusen Road to the west. The immediate properties surrounding the site are located within the City of Laurel’s jurisdiction. The surrounding zoning below is from the City of Laurel and are as follows:

North— Commercial/business and single-family residential uses in the Office Building (OB) and One-Family Detached Residential (R-55) Zones.

East— Single-family residential uses in the R-55 Zone.

South— MD 198 and beyond by single-family residential uses in the R-55 Zone.

West— Commercial/business uses in the Office Building (OB) Zones.

4. **Request:** The applicant requests approval of a special exception to permit the enlargement of a certified nonconforming apartment building with an additional seven units. The total number of dwelling units will increase from 218 to 225.

5. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	R-18	R-18
Use(s)	Multifamily	Multifamily
Acreage	9.22	9.22
Parcels	1	1
Gross Floor Area	95,502 sq. ft.	95,502 sq. ft.
Dwellings	218	225

6. **Required Findings:** This application, to amend a certified nonconforming use through a special exception, was accepted by the Planning Department on July 14, 2022, and is being reviewed in accordance with the prior Zoning Ordinance, pursuant to Section 27-1900 of the Zoning Ordinance.

The analysis of all required findings for approval are provided below.

General Special Exception Findings—Section 27-317(a) provides the following:

(a) **A Special Exception may be approved if:**

(1) **The proposed use and site plan are in harmony with the purposes of this Subtitle.**

The purposes of Subtitle 27 of the Prince George’s County Code, as set forth in Section 27-102(a)(1–15) of the prior Zoning Ordinance, are generally to protect the health, safety, and welfare of the public, to promote compatible relationships between various land uses, to guide orderly development, and to ensure adequate public facilities and services.

Staff finds that the proposed development will not negatively impact the public. The additional seven dwelling units will be contained within the existing buildings. No exterior changes are proposed. The surrounding neighborhood that is within the City of Laurel's jurisdiction will not be impacted. The existing multifamily building will continue to be compatible with the surrounding residential, commercial, and business uses. The additional dwelling units will provide another housing option that is available for County residents.

The site is located within the Developing Tier, as designated by the 2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035) and the Established Communities area of the General Plan Growth Policy. Developing Tier growth policies emphasize obtaining a balance between the pace of development and the demand for adequate roads and public facilities. Current and future residents of this development will have access to sufficient parking and public facilities. The special exception site plan shows a total of 289 parking spaces being provided compared to the 258 parking spaces required by the approved nonconforming use permit. In addition, conditions have been added to provide bicycle racks and crosswalks to safely facilitate circulation of bicycles and pedestrians throughout the site and surrounding neighborhoods.

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.

The proposed use is in conformance with the requirements and regulations set forth in Subtitle 27. A multifamily dwelling is a permitted use within the R-18 Zone. Regarding the development regulations, the subject property was certified as a nonconforming use through Permits 41032-2000-U and ERR-180. The application proposes to add seven dwelling units, increasing the total number of dwelling units from 218 to 225. The density will increase from 23.7 dwelling units per acre to 24.4 dwelling units per acre. The R-18 Zone development regulations that are not met are covered under the approved nonconforming use permit. Those regulations included the maximum percentage of two-bedroom units, maximum lot coverage, front yard setback, density, nonparallel parking space dimensions, number of parking spaces, and number of loading spaces. No changes to the building or site are proposed, as the additional seven dwelling units will be created within the existing building footprint. The proposed layout and floorplans have been provided by the applicant.

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Map Plan, the General Plan.

Special Exception SE-4852, as requested, conforms to this finding. The increase in density for the apartment buildings will not substantially impair the 2010 *Approved Master Plan and Sectional Map Amendment for Subregion I (Planning Areas 60, 61, 62, and 64)*. The subject property is located within the Established Communities growth policy area. The master plan recommends medium- to high-density residential land uses on the subject property. Plan 2035 describes Established Communities as areas appropriate for context-sensitive infill and low- to medium-density development and recommends maintaining and enhancing existing public services, facilities, and infrastructure to ensure that the needs of residents are met. The proposed increase in density by seven dwelling units will not substantially impair the integrity of the master plan because the proposed density is consistent with the master plan's recommendation of medium- to high-density residential land uses.

(4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.

The proposed use will not have adverse effects on the health, safety, or welfare of residents, as the additional seven dwelling units will be within the existing building. No changes to the site or exterior of the building are proposed.

The development will continue to provide adequate parking and safe traffic circulation for current and future residents. The site was designated as a certified nonconforming use with Permit 41302-2000-U for 206 dwelling units and a requirement of 258 parking spaces. In addition, ERR-180, an application approved by the Zoning Hearing Examiner for validation of a permit issued in error, approved the expansion of the number of dwelling units approved for the site from 206 to 218 and maintained that the 258 parking spaces were sufficient. The special exception site plan shows a total of 289 parking spaces being provided. In addition, conditions have been added to provide bicycle racks and crosswalks to ensure the site provides safe and adequate bicycle and pedestrian movement. The site will also maintain its 4 points of vehicular access along MD 198.

Considering the seven additional units proposed with the subject application, transportation staff assumes that the new units will generate an additional four AM peak-hour trips and four PM peak-hour trips. Given the nominal number of new trips associated with the subject application, the proposal will not have an adverse impact on the surrounding multimodal transportation network.

Staff finds that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area.

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

The immediate properties surrounding the site are located within the City of Laurel's jurisdiction. The uses include offices and commercial buildings to the north, single-family residences to the east and south, and a bank to the west.

Due to no changes being proposed for the site or exterior of the building, the harmony of the community and neighborhood will not be impacted. Ultimately, the additional seven dwelling units will not be detrimental to the use or development of adjacent properties or the general neighborhood. Staff finds that the proposed use is compatible with the surrounding existing commercial and residential development.

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan; and

The site is eligible for an exemption from the provisions of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance (WCO) because the property contains less than 10,000 square feet of woodland and has no previous tree conservation plan (TCP) approvals. Aerial imagery from PGAtlas shows that the site has been developed since 1965 with buildings, parking lots, and existing paving covering. The site was cleared, graded, and developed, prior to the enactment of the WCO.

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

Based on the plans submitted, the regulated environmental features on the subject property have been preserved and/or restored to the fullest extent possible.

No regulated environmental features or primary management areas are located on the subject property. In addition, no unsafe soils containing Marlboro clay or Christiana complexes have been identified on or within the immediate vicinity of this property. The proposed development is for interior alternations to existing buildings only.

Specific Special Exception Requirements—Section 27-384(a-c) provides the following:

Section 27-384—Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or reconstruction.

- (a) **The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7, below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following:**

- (1) **A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement;**

In accordance with the parking and loading regulations contained in Section 27-568 of the prior Zoning Ordinance, for multifamily dwellings, there are two spaces required for every dwelling unit. The total number of required parking spaces with the proposed 218 dwelling units would be 436 parking spaces. This requirement will not be met as only 289 parking spaces will be provided. The applicant provided a parking tabulation, which applies the parking regulation of two parking spaces per dwelling unit, to the proposed seven units only and not the entire development. The number of parking spaces on the site were evaluated under the approved nonconforming use permit.

The site was designated as a certified nonconforming use with permit 41302-2000-U for 206 dwelling units and a requirement of 258 parking spaces. In addition, the applicant has submitted documentation outlining ERR-180, which approved the expansion of the number of dwelling units approved for the site from 206 to 218 and maintained that the 258 parking spaces were sufficient. The application proposes an increase in dwelling units from 218 to 225. Transportation staff believes the number of parking spaces provided will remain sufficient for the proposed development. The additional seven dwelling units will be created within the existing building footprints. No changes to the site are proposed that would affect the parking regulations approved with the nonconforming use permit.

- (2) **A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that: (A) The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and (B) The requirements of Part 11 are met with regard to the extended area;**

Staff found no records to indicate that the subject property, as it existed at the time of the approval of nonconforming use permit 41302-2000-U, was not under single ownership. Only one owner was listed on the nonconforming use permit application, which at the time was Westgate DNB Associates LLC. The applicant has submitted the previously recorded deeds in the case file.

Staff also finds that the requirements of Part 11 have been met. The proposed development will add 7 additional one-bedroom units for a total of 225 dwelling units on the subject property. The existing structure will remain, and no changes to the structure or exterior are proposed.

- (3) A certified nonconforming use may be reconstructed, provided that: (A) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming; (B) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date; (C) The requirements of Part 11 are met with respect to the entire use; and (D) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner;**

No plans are proposed to reconstruct the certified nonconforming use. The existing structure will remain, and no changes to the structure or exterior are proposed. The additional seven dwelling units will be created within the existing buildings. The applicant has provided the proposed floorplans in the case file. The units are also outlined in the submitted special exception site plan.

- (4) When not otherwise allowed, a certified nonconforming use may be otherwise altered by the addition or relocation of improvements, such as fencing, landscaping, off-street parking and loading areas, and outdoor trash enclosures, or the relocation of buildings or other improvements within the boundary lines of the lot as it existed as a single lot under single ownership at the time the use became nonconforming;**

No changes to the site or exterior of the buildings are proposed. The existing fencing, landscaping, parking areas, and trash enclosures will remain the same and not be disturbed. Staff has included conditions for the applicant to provide bicycle racks and crosswalks,

which may include new landscaping areas on the subject property. The building layout of the site will remain the same as on the approved nonconforming use permit. All proposed construction will be interior.

- (5) Any new, or any addition to, or alteration or relocation of an existing building or other improvement (which is either nonconforming or utilized in connection with a certified nonconforming use), shall conform to the building line, setback, yard, and height regulations of the zone in which the certified nonconforming use is located. The District Council may further restrict the location and bulk of the building or structure where the evidence so warrants. If the use is presently permitted by Special Exception in the zone, the new building, improvement, or addition shall conform to all of the physical requirements of the specific Special Exception use;**

The proposed interior improvements will not alter the building line, setback yard, and height regulations of the R-18 Zone, which were stated on the approved nonconforming use permit. No changes to the site are proposed that affects the parking regulations approved with the nonconforming use permit.

- (6) The District Council may grant this Special Exception for property within a one hundred (100) year floodplain only after it has determined that the proposed enlargement, extension, reconstruction, or alteration will: (A) Not require additional filling in the floodplain; (B) Not result in an increase in elevation of the one hundred (100) year flood; and (C) Conform with all other applicable requirements of this Subtitle and of Division 2 of Subtitle 4, "Building," of this Code, entitled "Construction or Changes in Floodplain Areas."**

The subject property is not located within a 100-year floodplain.

- (7) In a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted where the existing lot coverage in the CBCA exceeds that allowed by Section 27-548.17, and which would result in a net increase in the existing lot coverage in the CBCA. In addition, a Special Exception shall not be granted which would result in converting a property which currently meets the lot coverage in the CBCA requirements of Section 27-548.17 to a nonconforming status regarding lot coverage in the CBCA, except if a finding of extenuating circumstances is made, such as the necessity to comply with other laws and regulations.**

The subject property is not located within the Chesapeake Bay Critical Area Overlay Zone.

- (b) **Applications for this Special Exception shall be accompanied by a copy of the Use and Occupancy Permit for the certified nonconforming use, as provided for in Section 27-241(b):**

The applicant has provided a copy of the nonconforming use permit site plan in the case file.

- (c) **In a Chesapeake Bay Critical Area Overlay Zone, in order to permit the alteration, enlargement, extension, or reconstruction of any nonconforming building or structure or nonconforming use, the District Council shall find that: (1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship; (2) A literal interpretation of the County's Critical Area Program regulations would deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area Overlay Zones; (3) The granting of a Special Exception would not confer upon an Applicant any special privilege that would be denied by this Subtitle to other lands or structures within the Chesapeake Bay Critical Area Overlay Zones; (4) The request for a Special Exception is not based upon conditions or circumstances which are the result of actions by the Applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property; (5) The granting of a Special Exception would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Chesapeake Bay Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area; and (6) The application for a Special Exception has been made in writing to the District Council or Zoning Hearing Examiner, if applicable, with a copy provided to the Chesapeake Bay Critical Area Commission.**

The subject property is not located within the Chesapeake Bay Critical Area Overlay Zone.

7. **Parking Regulations:** In accordance with the parking and loading regulations contained in Section 27-568, for a multifamily dwelling, there are two spaces required per dwelling unit. The applicant has proposed seven dwelling units, which would require an additional 14 parking spaces. The required number of parking spaces per the approved nonconforming use permit was 258 parking spaces. The applicant has provided a parking tabulation, which adds two additional parking spaces for each dwelling unit being sought with the subject application. The special exception site plan shows a total of 289 parking spaces will be provided.
8. **2010 Prince George's County Landscape Manual Requirements:** The special exception qualifies for an exemption from the 2010 *Prince George's County Landscape Manual*, pursuant to Section 1.1(d), as no site changes are proposed with this application.

9. **Tree Canopy Coverage:** Staff finds that due to the limited scope of this special exception, and that there will be no site disturbance, the proposed plan is exempt and not subject to tree canopy coverage requirements.
10. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance:** The site is exempt from the provisions of the WCO because the property contains less than 10,000 square feet of woodland and has no previous TCP approvals.
11. **Signage:** The signage chart, sign details, and sign location key map are shown on Sheet 5 of the special exception site plan. A sign package was not submitted with this application. The proposed improvements are limited to the interior of the buildings. Therefore, this application does not require review of the sign regulations.
12. **Referral Comments:** The following referrals were received and are incorporated herein by reference. All the comments are addressed on the site plan, or as part of this technical staff report:
 - a. Community Planning Division, dated August 15, 2022 (Green to Lockhart)
 - b. Environmental Planning Section, dated September 19, 2022 (Juba to Lockhart)
 - c. Historic Preservation Section, dated July 19, 2022 (Stabler and Smith to Lockhart)
 - d. Permit Review, dated August 16, 2022 (Hughes to Lockhart)
 - e. Subdivision Section, dated August 15, 2022 (Kaur to Lockhart)
 - f. Transportation Planning Section, dated September 20, 2022 (Ryan to Lockhart)

RECOMMENDATION

A special exception must be approved if the applicant satisfies the required criteria which are intended to address any distinctive adverse impacts associated with the use.

Based on the applicant's statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings, as set forth in Section 27-317 (in general) and Section 27-384 (nonconforming buildings, structures, and uses) of the prior Prince George's County Zoning Ordinance. Staff finds the proposed application satisfies the requirements for approval and finds the application will be in conformance with the Zoning Ordinance requirements.

Therefore, staff recommends APPROVAL of Special Exception SE-4852, for Westgate Apartments, subject to the following condition:

1. Prior to the certification of the special exception:
 - a. Provide a general note indicating the gross floor area which existed on the property prior to January 1, 1990.

- b. Provide two bicycle racks and an associated detail sheet (inverted U-style or a similar bicycle rack model that provides two points of contact for a parked bicycle) at each apartment building, at a location convenient to the building entrances.
- c. Provide crosswalks for all four points of vehicle entry along MD 198 (Gorman Avenue).

STAFF RECOMMENDS:

- Approval of Special Exception SE-4852