

IN RE: PETITION FOR SPECIAL HEARING
NE/S Yorkway 320' NW C/L
Leeway
(2521 Yorkway)
12th Election District
7th Councilmanic District
Contract Purchaser: Landex Corp.
Legal Owner: Ronald Gajewski
et ux

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-253 SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the nonconforming use of the subject property as a four unit apartment building in a D.R. 10.5 zone as more particularly described in Petitioner's Exhibit 1.

The Petitioner, by the Contract Purchaser, Landex, Inc., represented by David G. Johnston, appeared, testified and was represented by John B. Gontrum, Esquire. Also appearing and testifying on behalf of the Petition were Griffith Davis, a community representative, and Douglas Kennedy, a registered professional engineer, with KGW Consultants, Inc., who prepared Petitioner's Exhibit 1. Petitioner's Exhibit 1 contains additional notations placed thereon by the attorney for the Petitioner. The current property owner, Mr. Ronald Gajewski, appeared and testified. There were no Protestants.

Testimony indicated that the subject property, known as 2521 Yorkway, was improved by a four unit apartment building in 1943 or 1944. Testimony indicated that there are two units on the first floor of the building and two units on the second floor. The remaining portion of the basement is improved with storage and utility space. The subject property

is serviced by a rear parking area which is accessed off of a common alley. Tax records submitted evidenced that the subject building has been assessed over the years and transferred as at least a four unit building continuously and without interruption since approximately 1944. Testimony and evidence presented substantiates that the building was originally constructed as a four unit apartment building and has been used consistently as a four unit apartment building since its original development. The evidence tends to indicate the subject property was zoned "D" residential during the 1945 Baltimore County Comprehensive Zoning. The evidence further establishes that the exterior parameters of the building have not changed or been altered since the original construction.

Numerous other cases have been considered over the years for nonconforming use in the immediate vicinity. Affidavits from those cases also were introduced by Petitioner and indicate that the Yorkway units were all built at about the same time in the mid-1940s as four unit apartment buildings. Over the years some buildings have added additional units in the basement area. In almost every case, without exception, nonconforming uses have been granted for at least four units. Case No. 89-103-SPH was decided in September, 1988 for 2532 Yorkway for a similar building in the next block. Additionally, Case Nos. 88-14-SPH and 86-290-SPH found that nonconforming uses existed for at least four apartments since prior to 1945. In the instant case, the Petitioner requests a nonconforming use for the original four apartment units only.

The first issue to be determined in a nonconforming use case is whether or not the property in question was legally and permissibly developed prior to the statutory change which created the alleged nonconforming status. The four unit apartment building in the instant case was con-

structed prior to the adoption of the 1945 zoning regulations. This property is often referred to by the Petitioner and in this Opinion as an apartment building. This building is an apartment house as that term was defined in the original Baltimore County Zoning Regulations (B.C.Z.R.). That term was then defined as:

"A detached building used and/or arranged for occupancy as dwellings for three or more families as separate housekeeping units. All such housekeeping units shall have unit in use and be supplied, in common, with heat, sewerage and/or other public convenience or utilities."

There is evidence of heat and public utilities in common. Therefore, the building does comply with the "D" residential zoning placed on the land on January 2, 1945 for an apartment house.

The Petitioner has established that the building existed prior to January 2, 1945 or the beginning of zoning regulations.

The second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the property. A determination must be made as to whether or not any change that has occurred is a different use and therefore breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See *McKemy v. Baltimore County, Md.*, 39 Md. App. 257, 385 A2d. 96 (1978).

Clearly, the use of the subject property has not changed since 1944. The property has always been a four unit apartment building and there have been no changes or interruptions in that use. The subject property was also in compliance with the original "D" residential zoning for an apartment house for four (4) apartment units.

The Petitioner does not claim an expansion of this use beyond the original four apartments. The evidence establishes the apartments in the subject building have been occupied continuously and without interruption since approximately 1944.

Pursuant to the advertising, posting of the property and public hearing held and for reasons given above, the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner of Baltimore County, Maryland, this 29th day of December 1988 that the Petition for Special Hearing to approve the nonconforming use of the subject property known as 2521 Yorkway as a four unit apartment building in a D.R. 10.5 zone as more particularly described in Petitioner's Exhibit 1, be and the same is hereby GRANTED.

J. Robert Haines
Zoning Commissioner of
Baltimore County

JRH:mmm
cc: Peoples Counsel
John B. Gontrum, Esquire, 809 Eastern Boulevard, Essex, Md. 21221

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333

J. Robert Haines
Zoning Commissioner

December 29, 1988

Dennis F. Rasmussen
County Executive

John B. Gontrum, Esquire
809 Eastern Boulevard
Essex, Maryland 21221

RE: Petition for Special Hearing
Case #89-253-SPH
Contract Purchaser: Landex Corporation
Legal Owner: Ronald Gajewski, et ux

Dear Mr. Gontrum:

Enclosed please find the decision rendered on the above captioned case. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3391.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mmm
att.
cc: Peoples Counsel

#2513-Item-216
#2515-Item-217
#2517-Item-218
#2519-Item-219
#2521-Item-220
Form #1 of 7
PETITION FOR SPECIAL HEARING
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve as a legal non-conforming use the following buildings (each with four

apartments) located on Yorkway, Baltimore County, Maryland (#2513, #2515,

#2517, #2519, #2521)

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

Judith S. Siegel, President

(Type or Print Name)

Landex Corporation

250 Centerville Road, Bldg. 6

Address

Marwick, R.I. 02886

City and State

Attorney for Petitioner:

John Gontrum

(Type or Print Name)

809 Eastern Blvd.

Address

Essex, Md. 21221

City and State

Attorney's Telephone No.: 301-686-8274

Legal Owner(s):

Ronald Gajewski, et. ux.

(Type or Print Name)

Ronald Gajewski

Signature

(Type or Print Name)

7713 Charlesmont Road

Address

Baltimore, Maryland

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

Phone No.

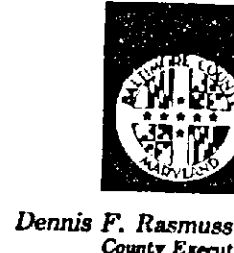
ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 19____, at _____ o'clock _____M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

COPIES OF HEARING
AVAILABLE FOR HEARING
V./TUES./WED. - NEXT TWO MONTHS
OTHER

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner

December 29, 1988



Dennis F. Rasmussen
County Executive

Community Development Administration

45 Calvert Street

Annapolis, Maryland 21401

Benton Mortgage Company

5731 Lyons View Drive

Nashville, Tennessee 37919

RE: Yorkway Apartments

Gentlemen:

I have this day taken testimony and evidence with respect to the following Yorkway Apartment Buildings:

2513 Yorkway
2515 Yorkway
2517 Yorkway
2519 Yorkway
2521 Yorkway
2506 Yorkway
2611 Yorkway
2613 Yorkway
2625 Yorkway
2605 Yorkway
2607 Yorkway
2627 Yorkway
2629 Yorkway
2504 Yorkway
2510 Yorkway
2511 Yorkway

Based on the testimony and evidence presented, I am issuing findings of fact and conclusion of law indicating that these buildings all have legal nonconforming uses as four unit apartment buildings.

The following properties 2609 Yorkway, 2619 Yorkway, 2527 Yorkway and 2529 Yorkway have all previously been found to have legal nonconforming uses. To my knowledge, there are no zoning violations outstanding on any of these buildings, and they may continue as four unit apartment buildings in conformance with the laws and regulations of Baltimore County.

Very truly yours,
J. Robert Haines
Zoning Commissioner

JRH:mmm

Douglas L. Kennedy, P.E.
William K. Woody, L.S.

KCW Consultants, Inc.
Civil Engineers and Land Surveyors

1777 Riveswood Road
Commerce, Suite 175
Baltimore, Maryland 21208

(301) 484-0894 / 484-0963

John M. Cosarquis, L.S. (Ret.)

November 29, 1988

PETITIONER/CONTRACT PURCHASER:

LANDX CORPORATION

250 Centerville Road, Bld. 6

Warwick, Rhode Island 02886

Attn: Ms. Judith Siegel

(401) 732-5430

PROPERTY DESCRIPTION TO ACCOMPANY

PETITION FOR SPECIAL HEARING

12th ELECTION DISTRICT

BALTIMORE COUNTY, MARYLAND

#2521 YORKWAY Acc. #12-13-043443



J. Robert Haines
Zoning Commissioner

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

Dennis F. Rasmussen
County Executive

**Zoning Commissioner of
Baltimore County**

**PETITIONER'S
EXHIBIT 3B**

AFFIDAVIT

My name is James Thompson and I am the Zoning Enforcement Supervisor for the Department of Planning and Zoning in Baltimore County, Maryland. I have been employed in the Zoning Office as a Zoning Enforcement Officer and as a Zoning Inspector for 11 1/2 years. For the past 6 years, I have acted as the Chief of the Zoning Enforcement Section. Over these years, I have become acquainted with the apartment buildings on Yorkway in the Dundalk area of Baltimore County. Numerous violations have been filed against various units on the Yorkway complex for exceeding the permitted number of units within the given zone. A review of the zoning records on the numerous violations which we have researched over the past decade indicates that the apartment units on the 2500 and 2600 block of Yorkway were all built about the same time in 1943 and 1944. The units were all built as four (4) unit apartments. When zoning became effective in January in 1945, these apartment buildings were classified as a Class D residential zone. This zone allowed three (3) units or more per dwelling. However, the original regulations provided for non-conforming uses as follows:

"A lawful non-conforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such non-conforming use to a conforming use, or any attempt to change from such

PETITIONERS
EXHIBIT 4

BALTIMORE COUNTY, MARYLAND

J. Robert Haines
TO: Zoning Commissioner Date: December 28, 1988

Pat Keller, Deputy Director
FROM: Office of Planning and Zoning

Landex Corporation
SUBJECT: Zoning Petition Nos. 89-249-X thru 89-264-X

The applicant is requesting a special hearing to establish four apartment units within 19 buildings, the majority of which constitute York Park as shown on the applicant's site plan dated October 20, 1988. It is not clear from the applicant's submittal if buildings 2615, 2609, 2527 and 2529 are included in this request. Baltimore County has been involved with the applicant in the past. The County has been involved with the applicant in the past to rehabilitate and upgrade apartments within this project. There has also been an effort to clean up the railroad right-of-way that is located along the rear of Block No. 9. Staff has no detailed comments or recommendation regarding this request.

PK/sf

[illegible]

PETITIONER'S
EXHIBIT 5

**Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353**

**J. Robert Haines
Zoning Commissioner**

December 20, 1988

Judith S. Siegel, President
250 Centerville Road
Building Six
Warwick, Rhode Island 02886

RE: Case Numbers 89-249-SPH through
89-264-SPH - Yorkway

Dear Ms. Siegel:

Upon review of the documentation which you have submitted in the above referenced cases supporting the evidence of a nonconforming use in the 16 locations on Yorkway which are the subject of the above referenced cases, I am satisfied that if all of the dwellings were constructed with four bedrooms on January 2, 1945 that obviously an apparent nonconforming use existed at one time. Due to the extreme urgency of your mortgage obligations prior to December 31, 1988, I will provisionally approve the building permits subject to a final determination upon presentation of evidence in the hearing on the nonconforming use. The hearing on the nonconforming use will occur on the 29th which will allow any protestants to provide any evidence in opposition to the existence of the nonconforming use.

Very truly yours,

J. Robert Haines
J. Robert Haines
Zoning Commissioner

JRH:scj

10/24/88:819.RG:ECC10239

**PETITIONER'S
EXHIBIT 6**

IN RE: ~~REDACTED~~ BEFORE THE

PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER, BALTIMORE COUNTY
59/C Yorkway and Leeway *
(2312 and 2314 Yorkway) * OF
12th Election District *
7th Councilmanic * BALTIMORE COUNTY

BRIJDEO SHIVNARAIN, *
DANIEL ASBOTT, et al * Case No. 89-101-SPH

Petitioners

AFFIDAVIT

I, Marge Capecci, hereby certify that I am over 18 years of age and competent to testify as follows:

1. I first lived at 2526 Yorkway in 1945 and lived there for approximately two (2) years. We attempted to purchase but were unable to do so and instead rented the property. We then moved to 6918 Homeway, very nearby to this apartment neighborhood, and continued to frequent the Yorkway area to visit family and friends over the course of the next forty (40) years up to the present.

2. I specifically recall the property known as 2534 Yorkway, an end of group, in that same originally contained four (4) apartment dwelling units with a sales office in the basement, which in 1946 or shortly thereafter, was converted to a fifth apartment dwelling unit in the basement.

3. I specifically recall my children playing with the children of families who lived in that basement apartment at 2534 Yorkway, and can state that I have frequently visited 2534 Yorkway

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
N/S Yorkway, 225' E of Leeway *
2609 Yorkway * DEPUTY ZONING COMMISSIONER
12th Election District *
Kenneth W. Martin, et ux, * OF BALTIMORE COUNTY
Petitioners * Case No. 86-290-SPH

The Petitioners herein request a Special Hearing to determine whether or not approval should be granted for the non-conforming use of 2600 Yorkway as a four apartment building since 1945, and furthermore, the non-conforming use of two additional apartments in existence since 1951.

Pursuant to the advertisement and posting of the above referenced property, a public hearing on the Petition was held on January 28, 1986, at which time one of the Petitioners testified that six apartments had been rented continuously since his purchase of the property in 1980. A witness testified that both basement apartments were occupied from spring to fall of 1957.

Two Protestants testified that the building was constructed for four apartments. One of the Protestants testified that the building was constructed in 1945; that in 1963 he was aware of one basement apartment; and that currently he can see a cat living in another basement apartment. The other Protestant testified that through the years, he gradually became aware that there were basement apartments in the neighborhood.

At the request of the Petitioner, the case was continued. The file indicates that the Petitioner would contact the Deputy Zoning Commissioner within 60 days to arrange a date to continue the case. The file includes copies of both a July and a September letter from the Deputy Zoning Commissioner asking that the Petitioner request either a continuation or a dismissal of the case. At this time, no such request has been made.

noted
DEFENDANT'S
EXHIBIT 8

ORDER RECEIVED FOR FILING

PLAT NO. 4 OF "DUNDALK"
C.W.B., JR. 12, FOLIO 63

RAILROAD R/W

20' RESERVATION

14' ALLEY

BLOCK NO. 9

YORKWAY

KENTWAY

2501 Yorkway
87-469
2505 Yorkway
86-141
2507 Yorkway
86-549

FAIRWAY

BLOCK NO. 8

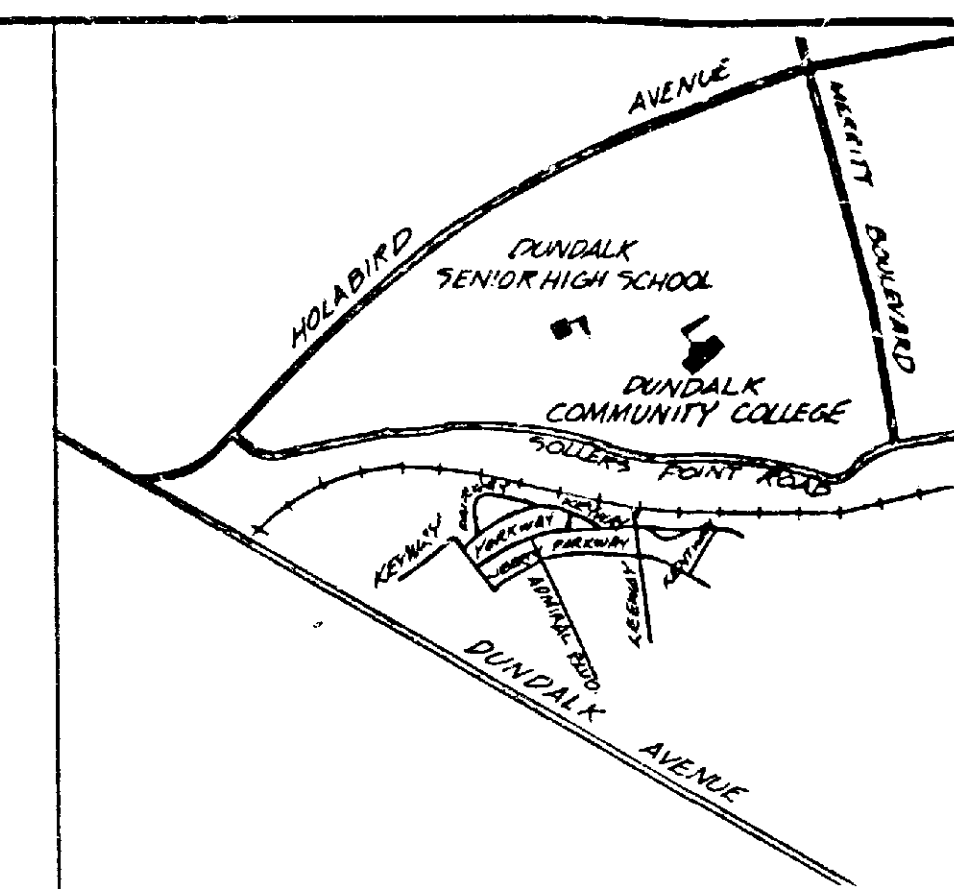
YORKWAY

BLOCK NO. 6

LEEWAY

BOULEVARD

ADMIRAL



LOCATION MAP
SCALE: 1" = 200'

SITE DATA

1. EXISTING ZONING D.R. 10.5
2. PROPOSED ZONING D.R. 10.5
3. ALL BUILDINGS SHOWN HEREON ARE EXISTING 2-STORY BRICK APARTMENT BUILDINGS CONTAINING 4-1 BEDROOM UNITS EACH.
4. PUBLIC WATER AND SANITARY SEWER PRESENTLY SERVE THIS SITE
5. OFF-STREET PARKING REQUIRED:
60-2 BR UNITS x 1.25 = 75
20-1 BR UNITS x 1.25 = 25
100 PARKING SPACES

OFF-STREET PARKING PROVIDED: 0 PARKING SPACES

ADDRESS	OWNER	DEED REFERENCE	ACC. #
* 2504 YORKWAY	YORKWAY PARTNERSHIP	EHK JR 6361-394	12-12-061010
* 2506 YORKWAY	NATHAN J. WINSLOW ALICE E. WINSLOW	EHK JR 6538-442	12-08-004230
* 2510 YORKWAY	GRIFFITH H. DAVIS	OTG 5280-112	12-10-25250
* 2511 YORKWAY	CARL J. VERSTANDIG DENISE VERSTANDIG	EHK JR 6900-206	12-08-056200
* 2513 YORKWAY	RONALD T. GAJEWSKI ROSEMARY C. GAJEWSKI	EHK JR 6873-534	12-13-043440
* 2515 YORKWAY	RONALD T. GAJEWSKI ROSEMARY C. GAJEWSKI	EHK JR 6873-534	12-08-002842
* 2517 YORKWAY	RONALD T. GAJEWSKI ROSEMARY C. GAJEWSKI	EHK JR 6873-534	12-13-043441
* 2519 YORKWAY	RONALD T. GAJEWSKI ROSEMARY C. GAJEWSKI	EHK JR 6873-534	12-13-043442
* 2521 YORKWAY	RONALD T. GAJEWSKI ROSEMARY C. GAJEWSKI	EHK JR 6873-534	12-13-043443
2527 YORKWAY	YORKWAY PARTNERSHIP	EHK JR 6361-394	12-18-049050
2529 YORKWAY	YORKWAY PARTNERSHIP	EHK JR 6361-394	12-02-073350
* 2605 YORKWAY	LOUIS PUGLESE MARY JOAN PUGLESE	EHK JR 7117-127	12-11-047661
* 2607 YORKWAY	LOUIS PUGLESE MARY JOAN PUGLESE	EHK JR 7105-391	12-01-069120
2609 YORKWAY	JOSEPH R. KAPICHAP	GM 7572 - 350	12-11-001230
* 2611 YORKWAY	NATHAN J. WINSLOW ALICE C. WINSLOW	EHK JR 6052-248	12-01-074432
* 2613 YORKWAY	NATHAN J. WINSLOW ALICE C. WINSLOW	EHK JR 6052-257	12-01-074431
* 2619 YORKWAY	JOSEPH R. KAPICHAP	SA 7596-244	12-11-047740
* 2625 YORKWAY	NATHAN J. WINSLOW ALICE C. WINSLOW	EHK JR 6052-263	12-18-049053
* 2627 YORKWAY	MICHAEL KOZLOWSKI ELIZABETH KOZLOWSKI GLENN WILLIAM DAVIS JOHN JOSEPH DAVIS	EHK JR 6826-204	12-18-049970
* 2629 YORKWAY	MICHAEL KOZLOWSKI ELIZABETH KOZLOWSKI GLENN WILLIAM DAVIS JOHN JOSEPH DAVIS	EHK JR 6726-204	12-18-049111

PRIN

DEC 27 1988

KCW CONSULTANTS, INC.

* PLAT TO ACCOMPANY PETITION
FOR SPECIAL HEARING

PETITIONER'S
EXHIBIT 1

SITE PLAN

YORK PARK

12TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

SCALE: 1" = 50' OCTOBER 20, 1988 DWG. G-1

KCW Consultants, Inc.
Civil Engineers and Land Surveyors
1777 Reisterstown Road
Commercentre, Suite 175
Baltimore, Maryland 21208
(301) 484-0963

DEVELOPER:
LANDEX CORPORATION
250 CENTERVILLE RD. BLDG. F
WARWICK, RHODE ISLAND 02886
ATTN: MS. JUDITH SIEGEL
(401) 732-5430

REVISED FRONT SETBACKS, 12/27/88
FINAL SET, 12/6/88