

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

ERR-247

DECISION

Application:	Validation of Multifamily Rental License M- 0168 Issued in Error
Applicant:	Melvin F. Fox Living Trust
Opposition:	None
Hearing Date:	April 15, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-247 is a request for validation of Prince George's County Multifamily Rental License No. M-0168. The license was issued in error for an Apartment building located at 5221 Marlboro Pike, Capito0l Heights, Maryland.
- (2) The subject property consists 11, 650 square feet in the R-18 (Multifamily Medium Density Residential) Zone. It is improved with a 5,610 square-foot two-story building with basement that includes six (6) apartment units.
- (3) No one appeared in opposition at the hearing held by this Examiner.
- (4) At the close of the hearing the record was left open to allow Applicant to submit revised documents and a deed. These items were received on April 23, 2015 and the record was closed at that time.

FINDINGS OF FACT

- (1) The Apartment was constructed in 1951. It consists of two 2-Bedroom units in the Basement (1st Floor), one 3-Bedroom unit and one 1-Bedroom unit on the second floor, and two 2-Bedroom units on the third floor. (Exhibits 6(a) - (j)) The Applicant has owned the property since June, 1973. The original purchase was in the name of Melvin F. Fox. Sometime thereafter it was transferred to the Melvin F. Fox Living Trust. Mr. Fox resides in the building in Apartment 5.

(2) The most recent Multifamily Rental License was issued on October 30, 2014. (Exhibit 4(b)) This is the license that Applicant is seeking to certify as issued in error. Applicant became aware of the need for the instant Application when it applied for a Use and Occupancy Permit (No. 39361-2014-U, which is pending). The Permit Review Section of the Maryland-National Capital Park and Planning Commission provided the following synopsis in its review of that application:

This permit is for an existing multifamily building with 6 units in the R-18 Zone. Per tax assessment information the building was constructed in 1951. There is no prior issued use and occupancy permit per Property Standards. The unit mix is 1 one bedroom unit (16.6%), 4 two bedroom units (66.6%) and 1 three bedroom unit (16.6%). Based on a lot size of 11,650 s.f. the site exceeds the current maximum density of the R-18 Zone by providing a density of 22.47 units per acre however only 12 per acre are allowed. The site also exceeds bedroom percentages because a maximum of 40% two bedroom and only 10% three bedroom are permitted and the site provides 66.6% two bedroom and 16.6% three bedrooms. Generally nonconforming use certification must be pursued for existing multifamily dwellings that exceed current density and bedroom percentages, however the building would have had to have met the requirements in effect when the building was constructed....

In 1951 the property was zoned C-1 which permitted dwellings provided that if the lot was used for dwelling purposes exclusively, such dwelling shall be of a type permitted, and in accordance with the regulations in the residential zone adjoining the C-1 Zone. In 1951 the property adjoined the R-R Zone to the south and west which would not have permitted a multifamily dwelling. The C-1 Zone would have only permitted a single family dwelling until 1976 when the Zoning Ordinance was amended to only permit dwellings in commercial building above the ground floor, then amended again in 1980 to also permit dwellings that were legally erected in a prior commercial zone. In 1986 when the property was finally rezoned to R-18 it exceeded bedroom percentages and density. Therefore unless the building was constructed prior to 11/29/49 when the property was zoned Commercial D, which would have permitted the multifamily dwelling, it appears the building was not lawful and would have to pursue Validation of Apartment [L]icense Issued in Error....

(Exhibit 12)

(3) Thus, the use could not be certified as nonconforming since it exceeded the density and bedroom percentage requirements in effect at the time of its construction. However, rental licenses have been issued for the six units since 1970. (Exhibits 4(a) – (i) and 5(a) – (p))

(4) Applicant has expended approximately \$14,000 to renovate the apartments, replace the roof, and insure the premises. (Exhibits 10, 13, 14, 15, 16 and 17)

(5) The property appears to be well maintained. (Exhibits 6(a) – (j)) It is surrounded by other apartment communities, a single family home, elementary school, and recreation facility is directly across Marlboro Pike. (T. 37-38)

(6) Applicant's witness testified that no fraud or misrepresentation was practiced in obtaining the Multifamily License and that at the time of its issuance no appeal or controversy regarding its issuance was pending.

LAW APPLICABLE

(1) A Use and Occupancy Permit or an Apartment License may be validated as issued in error in accordance with Section 27-258 of the Zoning Ordinance, which provides, in pertinent part, as follows:

(a) **Authorization.**

(1) A building, use and occupancy, or absent a use and occupancy permit, a valid apartment license, or sign permit issued in error may be validated by the District Council in accordance with this Section.

* * * * *

(g) **Criteria for approval.**

(1) The District Council shall only approve the application if:

(A) No fraud or misrepresentation had been practiced in obtaining the permit;

(B) If, at the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;

(C) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and

(D) The validation will not be against the public interest.

(h) **Status as a nonconforming use.**

(1) Any building, structure, or use for which a permit issued in error has been validated by the Council shall be deemed a nonconforming building or structure, or a certified nonconforming use, unless otherwise specified by the Council when it validates the permit. The nonconforming building or structure, or certified nonconforming use, shall be subject to all of the provisions of Division 6 of this Part.

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CONCLUSIONS OF LAW

The instant Application is in accordance with Section 27-258 of the Zoning Ordinance. The Applicant is seeking to validate an apartment license issued in 2014.

The record reveals that no fraud or misrepresentation was practiced in obtaining the Multifamily Rental License. The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this License. There is no evidence that there was any appeal or controversy regarding the issuance of the Multifamily Rental License.

Thus, the validation will not be against the public interest as the instant Application merely validates a use that has existed on the subject property for 60 years.

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-0168 and declare it to be a Certified Non-Conforming Use, in accordance with the Site Plan and Floor Plans. (Exhibits 7 and 18)