

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

ERR-254

DECISION

Application:	Validation of Multifamily Rental License No. 6823/Case No. M-791 Issued in Error
Applicant:	Marilyn V. Felix
Opposition:	None
Hearing Date:	October 21, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Condition

NATURE OF PROCEEDINGS

- (1) ERR-254 is a request for validation of Prince George's County Multifamily Rental License No. 6823/Case No. M-791 issued in error for two additions to a single-family home located in the R-10 (Multifamily High Density Residential) Zone, and identified as 3526 Maywood Lane, Suitland, Maryland.
- (2) The subject property is located within the municipal boundaries of Suitland, Maryland.
- (3) No one appeared in opposition at the hearing held by this Examiner. At the close of the hearing the record was left open to allow Applicant to submit additional information. Applicant submitted the information on November 9, 2015, and the record was closed at that time.

FINDINGS OF FACT

- (1) The Applicant is the owner of a multifamily apartment building located at 3526 Maywood Lane, Suitland, Maryland. The building consists of four one-bedroom units – two on each floor. (Exhibits 18(e)-(f)) The basement is used for tenants' and the applicant's storage. (Exhibit 18(g); T. 17)
- (2) Ms. Felix purchased the home in 1995. (T. 4) She was not advised at that time that she needed to obtain a new Use and Occupancy Permit for the property. She did secure the requisite Multifamily Rental License and it has been reissued for the subject property since the time of purchase. (Exhibits 4(a)-(h))

(3) Applicant is seeking to validate the most recent permit issued for the period of 2015-2017. (Exhibit 15)

(4) After being notified of the need to obtain a Use and Occupancy Permit, Applicant applied for one. (Exhibit 10) The Permit Review Section of the Maryland-National Capital Park and Planning Commission advised Applicant of the need to file the instant request upon its review of the Application for Use and Occupancy Permit No. 30092-2015-00:

This permit is for a 4 unit multifamily dwelling constructed in 1954 located at 3526 Maywood Lane. The property is zoned R-10 and is located within the Southern Green Line DDOZ. All of the dwelling units are one bedroom units. The site meets the density of the R-10 Zone and complies with bedroom percentages. However there is no off street parking, only a 10' wide residential driveway. The property owner verified there is no off street parking for the residents – the tenants park along the curb. There is no prior issued use and occupancy permit for the property per Property Standards. The applicant submitted copies of rental housing licenses #M-0791 from 1999 through 2015. Since the site was not “lawful” on the date of SMA approval it appears the applicant may need to pursue validation of apartment license issued in error. However I have sent an email to ... our legal office to determine if the current parking standards in the sector plan can be applied to this use and occupancy permit. Part VII, #3, on page 7 of CR-10-2014 states that “there is no minimum off-street parking space requirement”. Addition[al] comments will be generated once a determination has been made by legal. **7/22/2015 – Per legal we cannot apply this parking requirement to existing development that should have provided parking per the regulations in effect at the time of construction, therefore the applicant must pursue Validation of Apartment License Issued in Error for License Number M-0791....**

(Exhibit 3; emphasis in original)

(5) Applicant testified that no fraud or misrepresentation was practiced in obtaining the Building Permit and that at the time of its issuance no appeal or controversy regarding its issuance was pending. (T. 9-10)

(6) Applicant has expended approximately \$2,100.00 on improvements to the subject property in reliance on the most recently issued permit. These improvements include a mortgage, insurance, utility payments, and renovations, drain pipes to prevent water seepage in the building. (Exhibits 18(a)-(d); T. 78)

(7) The subject property is surrounded by similar small multifamily buildings and a larger apartment complex across Terrace Drive. (T. 11-13) The Applicant submitted exterior photos of the subject apartment – in two of the photos adjacent multi-family dwellings are visible. (Exhibits 16(a), 16(b), 18(h), 18(i) and 18(j))

LAW APPLICABLE

(1) The instant permit 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

(1) The instant Application is in accordance with Section 27-258 of the Zoning Ordinance. The request is to validate an apartment license. (Section 27-258 (a))

(2) The record reveals that no fraud or misrepresentation was practiced in obtaining the Use and Occupancy Permit. (Section 27-258(g)(1)(A))

(3) There is no evidence that any appeal or controversy regarding the issuance of the permit was pending before any administrative body at the time of its issuance. (Section 27-258(g)(1)(B))

(4) The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this permit. (Section 27-258 (g)(1)(C))

(5) Finally, the validation will not be against the public interest as the instant Application validates an apartment building that has existed in the surrounding community for over 70 years, adjacent to similar uses, without controversy. (Section 27-258 (g)(1)(D))

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. 6823/ Case No. M-791 in accordance with the Site Location Plat (Exhibit 11) and the Floor Plans (Exhibits 18(e)-(g)). The apartment building shall be declared to be a Certified Non-Conforming Use, with the condition that the basement not be used as a living area.