

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

ERR-250

DECISION

Application:	Validation of Multi-Family Rental Housing License M-172
Applicant:	Kennedy House Apartments
Opposition:	None
Hearing Date:	July 21, 2015
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-250 is a request for validation of Prince George's County's Multi-Family Rental Housing License No. M-172, issued in error on March 2, 2013 (Exhibit 2(k)) for 16 apartment units, on approximately 27,454 square feet of land, located in the R-18 (Multi-Family Medium Density Residential) Zone, also identified as 5651 Kennedy Street, Riverdale, Maryland.
- (2) No one appeared in opposition and at the close of the evidentiary hearing the record was kept open for several documents, upon receipt of which the record was closed August 18, 2015.

FINDINGS OF FACT

- (1) Neither tax assessment data nor the Maryland National Capitol Park and Planning Commission (M-NCPPC) apartment files disclosed the date of construction of the subject apartment building. (Exhibit 15) There is no record of an issued Use & Occupancy Permit per the Department of Permitting, Inspections and Enforcement. There is some thought that the 16 unit apartment building was constructed in 1963. (Exhibit 31(b))
- (2) The subject property was placed in the R-18 Zone on November 18, 1959 by the approval of A-3483. (Exhibit 15)
- (3) Kennedy House Apartments exceed the maximum density of 12 dwelling units per acre in the R-18 Zone as it contains 24.93 dwelling units per acre. (Exhibit 15)
- (4) The subject property is developed with 5 three bedroom units (31.2%) and 11 two bedroom units (68.7%). The R-18 Zone permits a maximum of 40% two bedroom units. (Bedroom percentages were adopted 10/1/68). (Exhibit 15)

- (5) Prior to 1964 the minimum net lot area required was 1,800 square feet per dwelling unit. The subject property only provided 1,747 square feet per dwelling unit, thus permitting a maximum of 15 dwelling units. In 1964 the minimum net lot area required was increased to 2,000 square feet per dwelling unit thus permitting a maximum of 13 dwelling units on the subject property. (Exhibit 15)
- (6) The 1983 rental license (M-172) and all subsequent rental licenses to date are for 16 apartment units. (Exhibits 2 (a)-(k))
- (7) The Applicant has expended monies in purchasing the subject property in 1983 (Exhibit 23) and in maintaining the subject structure and operating the rental units. (Exhibits 30-57)
- (8) The Applicant testified that to his knowledge no fraud or misrepresentation was practiced in obtaining Multi-Family Rental License No. M-172 and that no controversy regarding its issuance is pending before any legal body.
- (9) The subject property was developed and operated as a 16 unit apartment building since approximately 1963. It has been operated continuously in this capacity since then, blending in with the surrounding properties and not altering the character of the neighborhood. (Exhibits 24 and 28)

LAW APPLICABLE

(1) A Use and Occupancy Permit or an Apartment License may be validated as issued in error in accordance with §27-258 of the Zoning Ordinance. §27-258 states in pertinent part:

(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.

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(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.

CONCLUSIONS OF LAW

(1) The instant Application is filed in accordance with §27-258 of the Zoning Ordinance. The Kennedy House Apartments have been licensed by Prince George's County for 16 units since at least 1983. (Exhibit 2(a)) On May 4, 2015 the Applicant applied for Use and Occupancy Permit 17970-2015-U, but due to the nonconforming status of the subject property this Use and Occupancy Permit cannot be issued. (Exhibits 4 and 5) No fraud or misrepresentation was practiced in obtaining Multi-Family Rental License M-172. The Applicant has acted in good faith, expending 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 Multi-Family Rental License. The validation will not be against public interest as the instant Application merely validates a use that has existed on the subject property for almost 50 years. §27-258

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-172. The 16 dwelling unit apartment building on the subject property shall be declared to be a Certified Non-Conforming Use. The Site and Unit Location Plans are Exhibits 17 and 26.