

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

ERR-269

DECISION

Application:	Validation of Multifamily Rental License No. M-587 Issued in Error
Applicant:	Morris Family Trust, et. al. /Warren T. Morris, Trustee
Opposition:	None
Hearing Date:	October 4, 2017
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) ERR-269 is a request for validation of Prince George's County Multifamily Rental License No. M-587 issued in error for a 3-unit apartment building located on 0.1210-acre in the R-20 (One-Family Triple-Attached Residential) Zone at the northeast corner of 59th Place and Veterans Monument Place, and identified as 701 59th Place, Capital Heights, Maryland. The subject property is also described as Lots 26-27, Map of Fairmount Heights, recorded in Plat Book Liber A, page 85 MSA C2383-72, and is shown in Prince George's County Tax Assessment Map Book, page 65-F2. (Exhibit 4)
- (2) No one appeared in opposition at the hearings held by this Examiner.
- (3) At the conclusion of the hearing the record was left open to allow the applicant to

FINDINGS OF FACT

- (1) The structure is a three-unit 2 story with basement multifamily apartment building, with one unit on each floor. The Trust became the owner of the property in 1992. The Trustee, Mr. Warren Morris, notes that the apartment building was constructed in 1949 by his father with the same three dwelling units, and each have been leased since that time. The zoning history noted by staff of the Maryland National Capital Park and Planning Commission ("MNCPPC") suggests that the Trustee's father indicated that he would erect a two family dwelling, a permitted use at that time:

The property was rezoned from the Residential A Zone to the Residential B Zone on September 21, 1949 per Zoning Map Amendment #1338. In the ZMA case the property owner, Mr. Edward Morris, indicated he proposed to construct a two family

dwelling and a diagram of the proposed dwelling was included. The M-NCPPC report stated that would be a permitted use in the proposed R-20 Zone that was to be adopted for the property along with the new Zoning Ordinance on November 29, 1949.

(Exhibit 14)

(2) Research of County files reveals that Multifamily Rental Licenses have been issued to the subject property since 1989. Applicant is seeking to validate its most recent Multifamily Rental License, issued on February 27, 2015, which expired on February 27, 2017. (Exhibit 15(a)) The Town of Fairmount Heights issued Applicant a Use and Occupancy Permit for a 3-unit house for the period of June 26, 2015 to June 27, 2016 (Exhibit 16). The Department of Permitting, Inspections and Enforcement (“DPIE”) cited Applicant for not having a County Use and County Occupancy permit on file. Applicant submitted an application for one and then learned of the need to file the instant Application for a Permit Issued in Error after receiving information from M-NCPPC staff:

This permit is for a 3 unit apartment building in the R-20 Zone. A multifamily dwelling is a prohibited use in the R-20 Zone. The R-20 zone allows for a triple attached dwelling... [but] [t]he building does not meet the definition of a triple attached dwelling.

Per Property Standards Rental Housing License M-587 was first issued to the subject property for 3 units on 2/27/89. Rental licenses have subsequently been issued for 3 units to the present date. At the time the first rental license was issued in 1989 thru the present date a 3 unit multifamily dwelling has not been a permitted use in R-20 Zone. There is no prior issued use and occupancy permit for the property. At no time since the building was constructed in 1949 was the use of a 3 unit multifamily ever permitted. Therefore it appears that the applicant must pursue Validation of Apartment License Issued in Error in accordance with Section 27-258 of the Zoning Ordinance....

(Exhibit 14)

(4) Applicant submitted a site plan for the subject property. (Exhibit 9) It also submitted floor plans for the apartment building and pictures of the subject property and its surrounds. (Exhibits 8 (a)-(e), 36 and 37) There is one unit in the basement, one on the first floor, and one on the second floor. (Exhibit 37) The basement unit has its own access. The apartment building includes on-site parking. (Exhibit 36, pp.3 and 6). The subject property is well-maintained, as are the surrounding single-family homes and the few similar multifamily dwellings.

(5) Applicant expended over \$15,000 on utilities, taxes, and maintenance for the subject property, in reliance on the most recently issued permit. (Exhibits 20-26)

(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. There was nothing in DPIE’s files to suggest that violation notices had been issued for the use, other than the one issued that led to the filing of the instant request. Moreover, there has been a steady demand for the three units.

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(a) of the Zoning

Ordinance, since 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 license. (Section 27-258(g)(1)(A))

(3) There is no evidence that any appeal or controversy regarding the issuance of the license 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 over \$15,000 in reliance on this license. (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 nearly 80 years, in an established residential neighborhood consisting of single- family dwellings, and a few multifamily dwellings, without controversy. (Section 27-258 (g)(1)(D))

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-587 in accordance with the Site Plan (Exhibit 9) and the Floor Plans (Exhibit 37). The apartment building shall be declared to be a Certified Non-Conforming Use, with the condition that there be no further changes to the interior of the site that could result in the creation of another unit.