

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

ERR-235

DECISION

Application:	Validation of Multi-Family Rental License M-0135 Issued in Error
Applicant:	Fairview Apartments
Opposition:	None
Hearing Date:	July 23, 2014
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-235 is a request for validation of Prince George's County Multi-Family Rental License No. M-0135 issued in error on February 1, 2013, Exhibit 9(g), for 6 apartment units, on approximately 6,937 sq. ft. of land, located in the R-18 (Multi-Family Medium Density Residential) Zone, also identified as 905 Fairview Avenue, Takoma Park, Maryland.
- (2) No one appeared in opposition and the record was closed on July 23, 2014.

FINDINGS OF FACT

- (1) The existing 6 unit (one bedroom units) multifamily structure was constructed in 1950. (Exhibit 19) At the date of construction, a minimum of 1800 sq. ft. of net lot area was required per dwelling unit, thus permitting only 4 dwelling units. (Exhibit 6)
- (2) The subject property has obtained Apartment/Rooming House/Rental Housing Licenses from Prince George's County from 1970-present. (Exhibits 9 and 10)
- (3) The maximum density for the R-18 Zone is 12 dwelling units per acre and thus the maximum density for the subject property is 4 dwelling units; the subject property is developed with 6 dwelling units.
- (4) The Applicant has expended monies in purchasing the subject property in 2007 (\$470,000)(Exhibit 8), and in maintaining the subject structure and operating the rental units. (Exhibits 5(a) – 5(f))

(5) The Applicant testified that to his knowledge no fraud or misrepresentation was practiced in obtaining Multi-Family Rental License No. M-0135 and that no controversy regarding its issuance is pending before any legal body.

(6) The subject property was developed with a 6 unit apartment building in 1950 and has operated continuously in this capacity since that time, blending in with the surrounding properties and not altering the character of the neighborhood. Approval under these circumstances would not be against the public interest.

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.

* * * * *

(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 Fairview Apartments have been licensed by Prince George's County for 6 dwelling units since 2001 pursuant to Multi-Family Rental License No. M-0135. The Applicant has applied for, but is unable to obtain, a valid Use and Occupancy Permit for the subject property. (Exhibit 12) No fraud or misrepresentation was practiced in obtaining the License. The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the 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 the public interest as the instant Application merely validates a use that has existed on the subject property for almost 65 years. §27-258

RECOMMENDATION

It is recommended that the District Council validate Multi-Family Rental License No. M-0135. The 6 dwelling unit apartment building on the subject property shall be declared to be a Certified Non-Conforming Use. The Unit Location Plan is Exhibit 15.