

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

ERR-251

DECISION

Application:	Validation of Building Permit No. 9518-2014 Issued in Error
Applicant:	Troy Samuels
Opposition:	None
Hearing Date:	September 2, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-251 is a request for validation of Prince George's County Building Permit No. 9518-2014. The permit was issued in error for two additions to a single-family home located in the R-55 (One-Family Detached Residential) Zone, and identified as 4504 41st Avenue, North Brentwood, Maryland.
- (2) The subject property is located within the municipal boundaries of the Town of North Brentwood.
- (3) No one appeared in opposition at the hearing held by this Examiner. The Mayor of the Town of North Brentwood attended the hearing. At the close of the hearing the record was left open to allow Applicant to submit a copy of the loan taken in reliance on the Permit. Applicant submitted the information on September 9, 2015, and the record was closed at that time. (Exhibits 14(a) – (l))

FINDINGS OF FACT

- (1) The Applicant is the owner of a single-family dwelling located at 4504 41st Avenue, North Brentwood, Maryland.
- (2) He purchased the home in March, 2014. He and the Mayor of the Town of North Brentwood testified that the home was in a state of extreme disrepair at time of purchase. A picture of the structure prior to renovations is on the location drawing submitted with the Permit Application. (Exhibit 3)

(3) Building Permit No. 9518-2014 was first issued by the Prince George's County Department of Permitting, Inspections and Enforcement ("DPIE") on April 11, 2014, and a revision thereto was approved on June 4, 2014. (Exhibits 2(a) and 3) The initial permit allowed Applicant to add a 6'x12' one-story addition to the rear of the dwelling. The revised permit allowed him to construct and 8'x12' two-story addition to the home. (Exhibits 2(a) and 2(g))

(4) The Permit Review Section of the Maryland-National Capital Park and Planning Commission advised Applicant of the need to file the instant request:

[T]he ... permit was erroneously issued for approval on April 11, 2014, by the Maryland-National Capital Park and Planning Commission ... Planning Department. The permit application was to construct a two-story, 6'x12' addition to an existing structure on 4504 41st Avenue [in] North Brentwood. On June 4, 2014 a revision was filed to the above permit to add an additional 8'x12' two-story addition. These permits were issued in error because these applications should have been forwarded to the Prince George's County Planning Department's Historic Preservation Section for review prior to approval.

The subject property was designated as a Prince George's County Historic Site with the District Council's adoption of the 2010 Historic Sites and District Plan on June 8, 2010. As a designated historic site, the property is subject to the requirements of Subtitle 29.... Since the historic features of the building have all been removed by the erroneously permitted work, the only process open to the property owner is to pursue the resolution of a "Permit Issued in Error"....

(Exhibit 2(a))

(5) Representatives from the Permit Review Section and the Historic Preservation Planning Section testified. Both noted that the site had been designated as an historic site prior to the issuance of the permit to Applicant. However, staff erroneously failed to make note of that fact and did not refer the permit to the Historic Preservation Commission.

(6) 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.

(7) Applicant has expended approximately \$6,000.00 on improvements to the subject property in reliance on the permit. These improvements include gutting out most of the interior of the original home and building the two additions. Applicant provided pictures of the work done to improve the structure. (Exhibits 10(a) – (e))

(8) As noted above, the subject property is located within the municipal boundary of the Town of North Brentwood, Maryland. The Mayor, Petrella Robinson, testified that the home originally belonged to the Randall family – the first African American family in the Town. She believes it was considered for designation as a Historic Site for this reason. However, the owner prior to the Applicant had allowed it to deteriorate and often opened his home to drug addicts and alcoholics who, presumably, further trashed the structure. She believes Applicant has made vast improvements to the property. The Town supports the instant Application, with the proviso that Applicant places a plaque/marker on the site to note its historic significance. Applicant agreed to do so.

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 renovations completed by Applicant were approved by Prince George's County upon DPIE's issuance of Permit No. 9518-2014 to the Applicant on April 14 and June 4, 2014.

(2) The record reveals that no fraud or misrepresentation was practiced in obtaining the Use and Occupancy Permit. The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this permit. There is no evidence that there was any appeal or controversy regarding the issuance of the permit. Thus, the validation will not be against the public interest as the instant Application validates work that has been completed on the residence, and by all accounts the work improved the aesthetics of the structure and, therefore, the surrounding community.

RECOMMENDATION

It is recommended that the District Council validate Permit No. 9518-2014 be approved in accordance with the Site Plan approved by DPIE in conjunction therewith.¹ (Exhibit 3) It is further recommended that the District Council should impose the condition that Applicant place a historic marker, upon approval by the Town of North Brentwood and the Historic Preservation Commission (or its designee), on the front of the dwelling to commemorate the history of the dwelling

¹ There is no need to designate the site a nonconforming structure or use since a single-family dwelling is a permitted use in the zone.