

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

ERR-238

ON REMAND

DECISION

Application:	Validation of Multifamily Rental Housing License M-1066 Issued in Error
Applicant:	Alvin E. Courtney, Jr.
Opposition:	None
Hearing Date:	October 27, 2015
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) ERR-238 is a request for validation of Prince George's County's Multifamily Rental Housing License No. M-1066. The Rental Housing License was issued in error on July 6, 2013 (Exhibit 7) for three (3) multifamily dwelling units located on approximately 10,000 square feet of land, in the R-55 (One-Family Detached Residential)/D-D-O (Development District Overlay) Zones, identified as 3505 Varnum Street, Brentwood, Maryland.

(2) No one appeared in opposition and the record was kept open for a variety of documents, upon receipt of which the record was closed April 1, 2015.

(3) By Decision dated April 8, 2015, the Zoning Hearing Examiner recommended approval with conditions (Exhibit R-7), and, on exception, on July 14, 2015 the District Council issued an Order of Remand to the Zoning Hearing Examiner to conduct an additional evidentiary hearing to receive and evaluate additional testimony and evidence as follows:

1. On Remand, the ZHE shall allow Applicant the opportunity to submit any additional information and arguments concerning the current configuration of the multifamily dwelling units comprising the existing use, and any proposed modifications to the configuration of the dwelling units, for inclusion in the record for the proposed validation of Multifamily Rental License No. M-1066 on the subject property.
2. On Remand, the ZHE shall allow Applicant the opportunity to submit any additional information and/or testimony concerning any basement rental occupancy for inclusion in the record in evaluating the proposed validation of Multifamily Rental License No. M-1066 on the subject property. (Exhibit R-3)

(4) The evidentiary hearing on remand was held on October 27, 2015 during which the Applicant testified and submitted pictures regarding a portion of the basement bedroom which was illegally in existence in 1982 and he testified that this illegal addition formed the basis of 1982 Apartment License restriction "Rear basement bedroom is not to be occupied or used as a habitable room." This illegal expansion has been removed rendering the basement apartment a legal dwelling unit.

(5) The Applicant was offered the choice of which of the four (4) apartments he wished to discontinue occupying as only three (3) apartments can be validated pursuant to Multifamily Rental Housing License No. M-1066. The Applicant insisted repeatedly that he was asking for validation of Unit 2 (basement apartment)(Exhibit R-14(b), Unit 1 (a unit located partially on 1st and 2nd floors and the attic) (Exhibit R-14(d)-(f), and Unit 3 (a unit located partially on the 2nd floor and the attic)(Exhibit R-14(g)-(h). The Applicant is not requesting validation of the unit located wholly on the 1st floor and accessed by the front door of the structure. (Exhibit R-14(a))

(6) The Applicant admits to owning and operating several additional multifamily apartment buildings. The Applicant has stated that he will use the Apartment/Rental Office only for a rental office for the three (3) units located on the subject property. Any use of the Rental Office for matters not directly related to the rental of the three (3) rental units on the subject property is strictly prohibited and will result in an automatic revocation of the Apartment License and the nonconforming status of the three (3) apartment units. There will obviously be a great temptation to use this apartment unit as something other than a rental office for the subject property but the Applicant has been advised and stated his agreement to remove any and all items/papers/furniture located in the Rental Office which do not directly pertain exclusively to the rental of the three (3) apartments on the subject property.

(7) The record was left open to allow the submission of certain documents, and upon receipt of which, the record was closed on November 12, 2015.

FINDINGS OF FACT

(1) The subject property is improved with an existing 2 ½ story single family frame home which was constructed in 1932. It is located within the TRN Character Area of the Gateway Arts Development District Overlay Zone.

(2) In response to Zoning Violation Notice Z-3080-2-13, issued June 18, 2013 (Exhibit 9), for use of the subject structure without a Use and Occupancy Permit, the Applicant filed an Application for a Use and Occupancy for four (4) multifamily dwelling units. (Exhibit 8)

(3) A multifamily dwelling is a prohibited use both in the R-55 Zone as well as in the TRN Character Area of the Gateway Arts D-D-O Zone.

(4) The Prince George's County Department of Licenses and Permits has issued Rental Housing

Licenses for three (3) dwelling units at the subject property since June 29, 1971. (Exhibits 11 and 12) In 1982 the License and Permits inspection revealed the addition of a fourth apartment located in the basement of the subject structure. The 1982 Apartment License, and all ensuing Licenses, were issued predicated on the basement apartment being uninhabitable and that it remain locked and not to be occupied or used. (Exhibit 12(f))

(5) Although the Multifamily Rental Housing License has been issued since 1971, limited to three (3) units with the illegal basement unit locked and uninhabited, at some time subsequent to the 1982 provision, the basement unit was again illegally rented as dwelling unit, and is still being utilized.

(6) The Applicant expended monies in purchasing the subject property in May, 1989 (Exhibit 18) and in maintaining the subject structure and operating the rental units. (Exhibits 13, 19(e)-(m))

(7) The Applicant testified that to his knowledge no fraud was practiced in obtaining the Multifamily Rental Housing License for three (3) dwelling units; however the use of a fourth apartment continues to be illegal.

(8) The subject property has been developed as a three (3) unit apartment conversion within a single family detached dwelling since 1971, blending in with the surrounding properties and not altering the character of the neighborhood. (Exhibit 21)

(9) Exhibit R-14 contains the floor plans for the three (3) dwelling units which have been approved pursuant to M-1066 since 1971. Exhibit R-14(d)-(f) is the floor plan of the three (3) level apartment designated by the Applicant as Unit 1. Exhibit R-14(b) is the floor plan of the basement apartment unit designated by the Applicant as Unit 2. Exhibit R-14(g)-(h) is the floor plan of the two (2) level apartments designated by the Applicant as Unit 3. Exhibit R-14(a) is the floor plan of the one (1) level apartment located on the 1st floor and designated by the Applicant as Rental Office.

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 (a), (g) and (h) state:

(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 subject property has been licensed for three (3) multifamily dwelling units since 1971 pursuant to M-1066. In 1982 an illegally expanded fourth dwelling unit was discovered in the basement of the converted structure and ordered uninhabited and padlocked. The Applicant removed the illegal expansion and continues to utilize a dwelling unit in the basement of the subject property.

(2) The Applicant has applied for a Use and Occupancy Permit for three (3) dwelling units on the subject property (5075-2014-U). These three (3) dwelling units are designated as Units 1, 2, and 3 (Exhibits 14(b) and (d)-(h)). No fraud was practiced in obtaining the Rental License for Units 1, 2, and 3 (Exhibits R-14(b) and (d)-(h)). The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the Multifamily Rental Housing License for Units 1, 2, and 3 (Exhibits R-14(b) and (d)-(h)). There is no evidence that there was any appeal or controversy regarding the issuance of the Multifamily Rental Housing License M-1066 with the exception of the illegal expansion of the basement apartment dwelling. The validation of Units 1, 2, and 3 (Exhibits R-14(b) and (d)-(h)) will not be against the public interest as the instant Application merely validates three (3) apartment units which have existed on the subject property since 1971 and does not validate the illegal dwelling unit located wholly on the 1st floor of the subject structure. (Exhibit 14(a))

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental Housing License No. M-1066 for three dwelling units, Units 1, 2 and 3, Exhibits R14(b) and (d)-(h), subject to the following CONDITIONS:

1. That all kitchen facilities including the microwave, toaster, toaster oven, refrigerator, coffee maker, stove and all other cooking/eating facilities/furniture be removed from the unit designated as the Rental Office on Exhibit R-14(a) including but not limited to those items depicted in Exhibits R-22(e)-(j). The Rental Office shall not be used for cooking/eating.

2. The Rental Office shall not be used for homework or child care. All items related to homework or child care shall be removed, including but not limited those items shown in Exhibits R-22(a) and (b).
3. All files not directly relating to the rental of the three (3) apartment units on the subject property, including filing cabinets as depicted on Exhibits R-22(e), (d), (k)-(n), shall be removed. Files or documents relating to other properties or tax returns shall not be used or located in the Rental Office.
4. The Rental Office shall not be used for storage of tenant belongings, either current tenant or items left behind by previous tenants.
5. The Rental Office shall not be used for storage of any construction or maintenance materials.
6. The Rental Office shall not be used for any purpose other than the rental of the three (3) apartment units located on the subject property; any documents/items/furniture/files shall pertain exclusively to the rental of the three (3) apartments located on the subject property.
7. The Rental Office shall be inspected on a bi-annual basis by DPIE to insure compliance with these conditions and the cost of these inspections shall be paid by the property owner.
8. The violation of any of these Conditions shall result in the automatic revocation of any Apartment Licenses and the Certification of Nonconforming status of the subject property.