

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

ERR-276

DECISION

Application:	Validation of Multi-Family Rental Housing License M-0678
Applicant:	Deborah Tallman, Trustee (Adelphi Heights Apartments)
Opposition:	None
Hearing Date:	April 2, 2019
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-276 is a request for validation of Prince George's County's Multi-Family Rental Housing License No. M-0678, issued in error on March 12, 2016, Exhibit 8(i), for 12 apartment units on approximately 21, 270 square feet of land, located in the R-18 (Multi-Family Medium Density Residential) Zone, also identified as 9420, 9422 and 9424 Adelphi Road, Hyattsville, Maryland.
- (2) No one appeared in opposition and the record was kept open for the receipt of an as-built site plan, upon receipt of which the record was closed April 15, 2019.

FINDINGS OF FACT

- (1) Adelphi Heights Apartments were constructed in the mid 1950's and has been issued Apartment Licenses for 12 apartment units from 1970 to March 12, 2018. (Exhibits 8(a)-(i) and 9(a)-(i)). Licenses may have been issued prior to 1970 but they were unable to be located.
- (2) The Applicant's parents contracted to purchase the subject "twelve-unit, two story apartment building" February 6, 1973. (Exhibit 22) They purchased the subject property March 28, 1973 subject to a Deed of Trust. (Exhibits 10(a) and (b))
- (3) Adelphi Heights Apartments exceed the maximum density of 12 dwelling units per acre in the R-18 Zone as the as built density is 24.5 dwelling units per acre. The subject property became nonconforming as to density in January 1, 1964 when the minimum lot area per dwelling unit changed from 1800 square feet per unit to 2,000 square feet per unit, thus permitting a maximum of 10.6 units. (Exhibits 4, 5 and 6)

(4) The subject property is developed with 12 two bedroom units (100%). The R-18 Zone permits a maximum of 50% two bedroom units. (Exhibits 4, 5 and 6) The apartments became nonconforming as to bedroom percentages when this requirement was adopted on October 1, 1968.

(5) The 1970 apartment License (Exhibit 9(a)) application provides prior use and occupancy permit numbers 2131, 2132 and 2133 and clearly states that these use and occupancy permits were issued. Mike O’Connell, Property Standards Division, Department of Permitting, Inspections and Enforcement (DPIE) could not locate copies of these permits as the book that contained the permits was destroyed by fire years ago but opined that the numbers were consistent with use and occupancy permits issued in 1957. (Exhibit 5)

(6) The Applicant (or her parents) have expended monies in purchasing the subject property in 1993 (Exhibits 10(a) and (b)), and in maintaining and operating the 12 dwelling unit. (Exhibits 2 and 4)

(7) The Applicant testified that to her knowledge no fraud or misrepresentation was practiced in obtaining Multi-Family Rental License No. M-0678 and that no controversy regarding its issuance is pending before any legal body.

(8) The Applicant has provided a Site Plan which includes only 10 off street parking spaces which are of legal configuration. (Exhibit 11) The apartments have been operating since prior to 1970 with 12 smaller single parking spaces. The subject property is too small to provide 12 parking spaces sized in compliance with current requirements. An as built Site Plan has been provided which includes the 12 original parking spaces. (Exhibit 25)

(9) The subject property was developed and operated as a 12 unit apartment building since 1957, is well maintained (Exhibits 19(a)-(d)), blending in with the surrounding properties (Exhibits 21(a)-(g)) 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.

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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 Adelphi Heights Apartments have been licensed by Prince George's County for 12 units since at least 1990. (Exhibits 4, 5, 6, 8 and 9) No fraud or misrepresentation was practiced in obtaining Multi-Family Rental License M-0678. The Applicant (or her parents) 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 over 50 years. §27-258

RECOMMENDATION

It is recommended that the District Council validate Multi-Family Rental License No. M-0678. The 12 dwelling unit apartment complex on the subject property shall be declared to be a Certified Non-Conforming Use. The Unit Location Plans are Exhibit 20 and the Site Plan is Exhibit 25.