

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

**ERR-214
DECISION**

Application: Validation of Multi-Family
Rental Permit No. M-682
Applicant: Jianping Wu
Opposition: None
Hearing Date: September 2, 2009
Hearing Examiner: Maurene Epps Webb
Recommendation: Denial

NATURE OF PROCEEDINGS

- (1) ERR-214 is a request by Jianping Wu for the Validation of the last Multi-Family Rental Permit issued by Prince George's County (M-682), which was issued in error on September 17, 1991, for seven (7) apartment units. (Exhibit 11(b))
- (2) The subject property consists of approximately .5915 acre of land, in the R-55 (One-Family Detached Residential) Zone, and is identified as 3607 Longfellow Street, Hyattsville, Maryland. The property is located within the Gateway Arts Development District Overlay Zone in the Traditional Residential Neighborhood Character Area.
- (3) No one appeared in opposition to the request for validation.
- (4) At the close of the hearing the record was left open to allow Applicant to present documentation as to the habitability of the two (2) units within the basement. Applicant never submitted the information. The record was closed on September 6, 2013.

FINDINGS OF FACT

- (1) The apartments are housed in a three (3) story single-family dwelling with a basement. Tax records indicate that a 2 ½ story dwelling was constructed circa 1940. (Exhibit 10) At that time it was zoned "Residential A" which was a single family zone. Upon adoption of the Prince George's County Zoning Ordinance in 1949 it was placed in the R-55 Zone. Neither zone permitted multi-family dwellings; accordingly, this seven (7) unit apartment building has never been a permitted use.
- (2) The County issued the first apartment rental license for the facility on October 15, 1971, for six (6) units. (Exhibit 11(b)) In 1972 the license was issued for seven (7) units, and seven (7) units were certified each year thereafter. The last license issued by the County was dated September 17, 1991. In 1993 the County transferred its rental licensing

program to the City of Hyattsville. The City honored the licenses issued by the County and began its own inspection and licensing program effective July 1, 1993. Applicant submitted copies of all apartment rental licenses issued to the subject property since 1993. (Exhibit 12(b))

(3) Applicant purchased the property in February, 2003. He did not immediately apply for a Use and Occupancy permit because employees of the City of Hyattsville told him that he only needed a rental license. Fire Department inspectors informed him that he needed a Use and Occupancy permit when they did a routine inspection of the premises. (T. 8) Staff of the Maryland-National Capital Park and Planning Commission researched the zoning history for these units during its review of the Use and Occupancy permit application, and provided the following analysis:

This permit is for a 5 unit apartment building located in the Gateway Arts Development District Overlay Zone, Traditional Residential Neighborhood Character Area. The underlying zone is R-55. A multifamily dwelling is a prohibited use in this character area as well in the R-55 Zone. The property has been zoned R-55 since November, 29, 1949. Prior to this date this zoning was Residential A which was a single family zone and therefore did not permit multifamily dwellings. According to tax assessment information the building was constructed in 1930. The building is shown on the 1943 record plat. There is no record of an issued use and occupancy permit on file for the property per Community Services/DER. Mike O'Connell from Community Services/DER indicated there is an apartment file and he will send over all the information they have. I called and discussed the permit with the applicant, Mr. Wu. He has owned the property for 5 years. He indicated that there were actually 2 additional units in the basement that they have abandoned because they do not meet code. He will contact the City of Hyattsville to see what licenses and documentation they have. Once this is received additional review will occur on the permit. 12/19/2008 – Mike O'Connell sent over copies of apartment license applications with issue dates from 1970 through 1993. The applicant faxed me over his current 2008 multifamily license from the City of Hyattsville (# of units not indicated) as well as a 2008 WSSC bill indicating 7 units. The first multifamily license was applied for in July 1970 and issued on 10/15/71 for 6 units. In 1972 an additional unit was applied for, and then subsequent licenses were approved for 7 units. I am awaiting information from the City of Hyattsville as to history of their licensing of the property. The use of the property for a 7 unit multifamily dwelling is not permitted and has not been permitted since 1928. I have discussed the permit comments with Dineene O'Connor (Community Planning Division) and Debbie Gallagher (Supervisor, Permit Review) and we have determined Mr. Wu's options are to either file for Validation of Apartment License Issued in Error for a county issued multifamily license in accordance with Section 27-258 of the Zoning Ordinance or the owner can file for detailed site plan to change the list [of] allowed uses to be approved by the District Council in accordance with Section 27-548.26(b)(1)(B) of the Zoning Ordinance....

(Exhibit 13)

(4) The floor plan submitted by Applicant indicates that there are seven (7) one-bedroom units in the structure: two (2) on the basement level, two (2) on the main floor, two (2) on the second level, and one (1) on the third floor. (Exhibit 6(a)–(d)) At the time of the hearing Applicant testified that he is the only person that resides in the dwelling. (T.20-21)

(5) The two (2) units in the basement do not meet applicable Code requirements, and cannot be utilized as residences. (T. 12-15) The record was left open to allow the

Applicant an opportunity to submit proof that the requested units met all applicable Code provisions. (T.15-17)

(6) As noted above, the subject property lays within the Traditional Residential Neighborhood (“TPN”) Character Area of the Gateway Arts Development District Overlay Zone. It appears from the text of the Sector Plan that the conversion of one-family detached dwellings to a building containing up to three dwelling units is permitted upon approval of a Special Permit in this Character Area, but multi-family dwellings are prohibited. (2004 Gateway Arts District Sector Plan for Mount Rainier, Brentwood, North Brentwood, and Hyattsville, p. 194)

(7) Applicant was unaware that the number of units did not meet the density requirements when he sought the use and occupancy permit. Since its purchase in February, 2003, Applicant has expended nearly \$60,000 in reliance on Multi-Family Rental License No. M-682 and the subsequent licenses issued by the City of Hyattsville. (Exhibit 14 – T.17-19) These moneys were spent on general apartment renovations, such as replacement of windows, roof repair, painting, and kitchen/bathroom renovations.

(8) Applicant averred that no fraud or misrepresentation was practiced in obtaining the multi-family rental license and that no appeal or controversy regarding its issuance was pending before anybody. (T. 17)

LAW APPLICABLE

(1) The multi-family license may be validated as issued in error in accordance with Section 27-258 of the County’s Zoning Ordinance. The portions relevant to the instant request are Sections 27-258 (a), (g) and (h), which provide 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.

CONCLUSIONS OF LAW

(1) The law expressly allows Applicant to seek validation of an apartment license if it was validly issued. (Prince George's County Code, Section 27-258(a)) Applicant was granted the permit to allow it to continue to rent seven (7) apartment units at the subject site, notwithstanding the fact that the use was never permitted by law. Subsequent to that grant, two (2) units became uninhabitable.

(2) There is no evidence to support a finding that fraud or misrepresentation was practiced in obtaining the license. (Section 27-258(g)(1)(A)) The record indicates that there was no known appeal or controversy regarding the issuance of the license at the time of issuance. (Section 27-258(g)(1)(B)) The Applicant acted in good faith in seeking the license and expended considerable funds in reliance on said permit. (Section 27-258(g)(1)(C))

(3) However, Applicant bears the onus of prosecuting his case. He has not submitted the requested information, despite being granted over five years to do so. It is also not clear from the record whether the Applicant must now meet any other provision required by the Gateway Arts District Sector Plan before the use can continue. It would, therefore, be improper to approve the request without this relevant information, and validation would be against the public interest. (Section 27-258(g)(1)(D))

RECOMMENDATION

It is recommended that the District Council deny this request to validate Multi-Family Rental License M-682, to allow seven (7) apartment units, due to Applicant's failure to submit the requested information.