

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

ERR-239

DECISION

Application:	Validation of Multi-Family Rental License M-1110 Issued in Error
Applicant:	Rivion Johnson
Opposition:	None
Hearing Date:	October 22, 2014
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-239 is a request for validation of Prince George's County Multi-Family Rental License No. M-1110 issued in error on April 24, 2014, Exhibit 4(c), for four (4) apartment units on approximately 9,375 square feet of land, in the R-18 (Multi-Family Medium Density Residential) Zone, identified as 809 Cedar Heights Drive, Capitol Heights, 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 on November 5, 2014.

FINDINGS OF FACT

- (1) The existing four (4) unit (2 one (1) bedroom units (50%) and 2 two (2) bedroom units (50%)) multifamily structure was constructed in 1953.
- (2) The Applicant has obtained Rental Housing Licenses for 4 units from Prince George's County for the subject property from 2002-present. (Exhibits 4(a)-(c) and 9(a)-(d))
- (3) The maximum density for the R-18 Zone is 12 dwelling unit per acre (d.u.a.) and the subject property is developed with a d.u.a. of 18.6. (Exhibit 2)
- (4) In 1953, four (4) off street parking spaces were required but were never provided. (Exhibit 2)
- (5) The Applicant expended money in purchasing the subject property in March, 2002, (Exhibit 11) and in maintaining the subject structure and operating the rental units. (Exhibit 12)

(6) The Applicant testified that to his knowledge no fraud or misrepresentation was practiced in obtaining Multi-Family Rental License No. M-1110 and that no controversy regarding its issuance is pending before any legal body.

(7) The subject property was developed with a four (4) unit apartment building in 1953 and has operated continuously in this capacity since that time, blending in with the surrounding properties and not altering the character of the neighborhood. (Exhibits 13(a)-(h) 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 subject property has been licensed by Prince George's County for 4 dwelling units since 2002 pursuant to Multi-Family Rental License No. M-1110. As a result of the nonconforming status of the subject property, the Applicant has applied for, but is unable to obtain a valid Use and Occupancy Permit for the subject property. 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 60 years. §27-258

RECOMMENDATION

It is recommended that the District Council validate Multi-Family Rental License No. M-1110. The four (4) dwelling unit apartment building on the subject property shall be declared to be a Certified Non-Conforming Use. The Unit Location Plans are Exhibits (5) and 10(a)-(c).