

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

ERR-238

DECISION

Application:	Validation of Multifamily Rental Housing License M-1066 Issued in Error
Applicant:	Alvin E. Courtney, Jr.
Opposition:	None
Hearing Date:	August 27, 2014
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.

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. The Applicant testified that to his knowledge.

(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 Rental License for three (3) dwelling units; however the use of a fourth apartment in the basement continues to be illegal and must be vacated and padlocked in accordance with the conditional approval of the 1982 (and subsequent) Multifamily Rental Housing License for three (3) dwelling units. (Exhibit 12(f))

(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 27 contains the floor plans for the three (3) dwelling units which have been approved pursuant to M-1066 since 1971. Exhibit 27(a)(i)-(iii) is the floor plan of the three level apartment designated by the Applicant as Unit 1. Exhibit 27(b)(i)-(ii) is the floor plan of the two level apartment designated by the Applicant as Unit 3. Exhibit 27(c) is the floor plan of the one level apartment located on the 1st floor and designated by the Applicant as Rental Office. This first floor apartment is hereby designated as Unit 2. Exhibit 27(e), which is the basement apartment designated by the Applicant as Unit 2, is illegal and has been ordered to be uninhabited and padlocked since 1982.

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 illegal fourth dwelling unit was discovered in the basement of the converted structure and ordered uninhabited and padlocked. Despite this prohibition, and a violation of the Applicant's Multifamily Rental Housing License, the Applicant continues to utilize a fourth dwelling unit in the basement of the subject property.

(2) The Applicant has applied for a Use and Occupancy Permit for four (4) dwelling units on the subject property (5075-2014-U). There are only three (3) non-conforming dwelling units, designated as Units 1, 2, and 3 (Exhibits 27(a), (b) and (c)). The basement unit is not nonconforming as it has been occupied illegally since 1982. No fraud was practiced in obtaining the Rental License for Units 1, 2, and 3 (Exhibits 27(a), (b) and (c)). The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the Multifamily Rental License for Units 1, 2, and 3 (Exhibits 27(a), (b) and (c)). There is no good faith in the continued rental of the basement apartment unit in violation of the 1982 et seq rental licenses. There is no evidence that there was any appeal or controversy regarding the issuance of the Multifamily Rental License M-1066 with the exception of the continued illegal maintenance of the basement apartment dwelling. The validation of Units 1, 2, and 3 (Exhibits 27(a), (b) and (c)) 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 in the basement of the subject structure.

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-1066 for three dwelling units, Units 1, 2 and 3, Exhibits 27(a), (b) and (c), subject to the CONDITION that the basement dwelling unit be vacated, uninhabited and padlocked. Should the basement unit be occupied then the Certification of the subject property as a three (3) dwelling unit structure Non-Conforming Use shall be immediately nullified and automatically revoked without further action. The Unit Location Plan is Exhibits 27(a), (b) and (c). No other dwelling units may be occupied or utilized.