

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

ERR-243

DECISION

Application:	Validation of Multifamily Rental License M-682 Issued in Error
Applicant:	Peter Tatchell
Opposition:	None
Hearing Date:	February 25, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-243 is a request for validation of Prince George's County Multifamily Rental License No. M-682. The license was issued in error in 1973 for a 3-unit multifamily apartment building on approximately 0.12 acre located in the R-35 (One-Family Semidetached, and Two-Family Detached, Residential) Zone, also identified as 6106 41st Avenue, Hyattsville, Maryland.
- (2) The subject property lies within the municipal boundaries of the City of Hyattsville. The subject property also lies within the TRN Character Area of the Gateway Arts Development District Overlay Zone (DDOZ).
- (3) No one appeared in opposition at the hearing held by this Examiner.

FINDINGS OF FACT

- (1) The existing multifamily apartment building was initially constructed as a 3 story, plus basement, single-family dwelling. It was subsequently converted in 1938 to a 3-unit apartment building. (Exhibit 2) Applicant's counsel researched County records for licenses/permits issued prior to this conversion, to no avail, although he was able to find a copy of the Application seeking renewal of multifamily rental license M-682, reviewed in 1973. (Exhibit 3) He was informed by a representative of the Department of Permitting, Inspections and Enforcement ("DPIE") that the Department has purged many of its records, especially those concerning properties that lie within a municipality that issues its own rental licenses, such as the City of Hyattsville.

(2) There are three (3) apartments. The one in the basement is 1,473 square feet with two bedrooms and one bath. The one on the first floor is 1,949 square feet with two bedrooms and one bath. The unit on the second and third floors has four bedrooms and three bathrooms. (Exhibits 13(a)-(c) and 28(a)-(k))

(3) Applicant purchased the subject property in 2011 for approximately \$158,000. At the time of purchase the building had three exterior doors, three kitchens and three electrical panels – all leading Applicant to believe it was a 3-unit apartment. (Exhibit 16) After purchase he expended approximately \$200,000 in renovations, including, but not limited to, new flooring, and new kitchen cabinets. (Exhibit 14)

(4) The City of Hyattsville now issues its own rental licenses. Applicant requested a rental license from the City. Prior to issuance the City's agents inspected the property to ensure compliance with applicable Codes. The property was found to meet all Code requirements. (Exhibit 12) However, the City could not issue its own rental housing license until the County issued a final Use and Occupancy permit for the property.

(5) Applicant became aware of the need for the instant Application when DPIE advised that it could not issue the final Use and Occupancy Permit, 10193-2014-U. (Exhibit 20) The Permit Review Section of the Maryland-National Capital Park and Planning Commission provided the following synopsis in its review of the Application for the Use and Occupancy Permit:

This 3 dwelling unit cannot go through the nonconforming process because the 3 dwelling unit was never legally established/allowed in zoning at the date of construction (1938). Owner can pursue DSP (Gateway Arts District)... If a rental license is discovered indicating 3 dwelling units the owner can apply for validation of rental license issued in error....

(Exhibit 4)

(6) Applicant testified that no fraud or misrepresentation was practiced in obtaining the Multifamily License and that at the time of its issuance no appeal or controversy regarding its issuance was pending.

(7) Applicant provided an aerial of the property as well as a floor plan for the three dwelling units. (Exhibits 13(a)-(c) and 22) He also provided pictures of the subject property and the surrounding dwellings. (Exhibits 24-28)

(8) The property appears to be well maintained. (Exhibits 2 and 24-27) It is surrounded by similar single-family dwellings that have been converted to three-unit apartments on the north and south, and duplex homes on the other side of 41st Avenue. (Exhibit 28)

LAW APPLICABLE

(1) A Use and Occupancy Permit or an Apartment License may be validated as issued in error in accordance with Section 27-258 of the Zoning Ordinance, which provides, in pertinent part, 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.

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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.

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CONCLUSIONS OF LAW

The instant Application is in accordance with Section 27-258 of the Zoning Ordinance. The 3-unit Apartments were approved by Prince George's County upon its issuance of rental license M-682 in 1973. The Applicant has applied for, but is unable to obtain, a valid Use and Occupancy Permit for the subject property. The record reveals that no fraud or misrepresentation was practiced in obtaining the Multifamily Rental License. The Applicant has acted in good faith, expending considerable 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 Multifamily Rental License. Thus, 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 over 40 years.

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-682 and declare it to be a Certified Non-Conforming Use, in accordance with the Site Plan and Floor Plan. (Exhibits 13(a)-(c) and 18(a))