

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

**ERR-252**

**DECISION**

Application:	Validation of Use and Occupancy Permit No. 44936-2013-00 Issued in Error
Applicant:	Shadyside Properties Shopping Center, LLC/Allen Su
Opposition:	None
Hearing Date:	August 19, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

**NATURE OF PROCEEDINGS**

- (1) ERR-252 is a request for validation of Prince George's County Use and Occupancy Permit No.44936-2013-00. The permit was issued in error for a new tenant (Barber Shop/Beauty Salon, t/a Lillie's Barbershop Unisex) at 2323 Shadyside Avenue, Suitland, Maryland.
- (2) The subject property is located within a small strip shopping center, located on two (2) lots, with four (4) tenants.
- (3) No one appeared in opposition at the hearing held by this Examiner. At the close of the hearing the record was left open to allow Applicant to submit a signed copy of its lease with the new tenant. Applicant submitted a letter indicating that it did not have a signed copy on August 26, 2015, and the record was closed at that time. (Exhibit 16)

**FINDINGS OF FACT**

- (1) The Applicant is the owner of a small strip shopping center located on Shadyside Avenue, in Suitland, Maryland. It leased the unit at 2323 Shadyside Avenue, Suitland, Maryland to Tommie L. Davis/Lillie's Barbershop Unisex on August 26, 2014. (Exhibit 9) The prior tenant also operated a beauty salon, but chose to abandon the use and break its lease. Applicant submitted a plot plan for the shopping center with the unit at issue highlighted in yellow. (Exhibit 8(b)) The subject property is one of the tenants at the shopping center. Applicant leased the property to Lillie's Barbershop Unisex on August 26, 2014.

(2) Use and Occupancy Permit No. 44936-2013-00 was issued by the Prince George's County Department of Permitting, Inspections and Enforcement ("DPIE") on April 10, 2015. (Exhibits 5 and 13)

(3) Once the Permit Review Section of the Maryland-National Capital Park and Planning Commission reviewed the application, it advised Applicant of the need to file the instant request:

This permit is for a barber/beauty service at 2323 Shadyside Ave. The property was rezoned from the C-A Zone to the R-T Zone on June 1, 2010, by the Subregion 4 Master Plan and Sectional Map Amendment. Permit 44936-2013-U was recommended for approval for a barber/beauty service at this location by M-NCCPC on December 29, 2014, and subsequently issued by DPIE on April 10, 2015. On May 7, 2015 a memo was sent to DPIE requesting that this permit be revoked. The property owner, Mr. Su, was instructed to file a new use and occupancy permit so that he could pursue either validation of permit issued in error or certification of nonconforming use. Prior permits 5900-2006-U and 19566-2010-U were both approved and issued for a barber/beauty service at this location. If certification is pursued the application must be filed with Edward Holley for Planning Board review. This is necessary because the barber/beauty service ceased operation in approximately September 2013 (per Mr. Su during review of permit 14034-2014 for a proposed day care in the unit which was placed on hold and not pursued)....

(Exhibit 7)

(4) Applicant testified that no fraud or misrepresentation was practiced in obtaining the Use and Occupancy Permit and that at the time of its issuance no appeal or controversy regarding its issuance was pending. Counsel for Applicant also noted that she checked with the Board of Appeals and was advised that there is no record of any hearing being held by that body concerning the subject property.

(5) Applicant has expended approximately \$16,178 on improvements to the subject property in reliance on the permit. These improvements include the purchase and installation of styling chairs, shampoo units and drying units. (Exhibit 6)

(6) Mr. Su testified that the shopping center was constructed in the 1960's. Applicant purchased the site in 2002. Mr. Su further noted that the community has been clamoring for the opening of the new barber/beauty shop. The property appears to be well maintained. The subject property is surrounded by a Food Mart store, a store-front Church and a hair braiding shop. The shopping center is surrounded by a mature tree stand. (Exhibits 12 (b)-(d))

**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.

\* \* \* \* \*

(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 in accordance with Section 27-258 of the Zoning Ordinance. The barber/beauty shop was approved by Prince George's County upon its issuance of Use and Occupancy Permit No. 44936-2013-00 to the Applicant on April 10, 2015.

(2) The record reveals that no fraud or misrepresentation was practiced in obtaining the Use and Occupancy Permit. The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this permit. There is no evidence that there was any appeal or controversy regarding the issuance of the permit. 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 since 2006 (if not prior thereto).<sup>1</sup>

### **RECOMMENDATION**

It is recommended that the District Council validate Permit No. 44936-2013-00 and declare the subject property to be a Certified Non-Conforming Use, in accordance with the highlighted portions of the Plot Plan. (Exhibit 8(b))

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<sup>1</sup>The Use and Occupancy Permit at issue was required due to a change in occupant, not a change in use.