

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

ERR-257

DECISION

Application:	Validation of Multifamily Rental License No. M-0129 Issued in Error
Applicant:	831 Fairview Avenue Apartments, LLC
Opposition:	None
Hearing Date:	July 27, 2016
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Condition

NATURE OF PROCEEDINGS

- (1) ERR-254 is a request for validation of Prince George's County Multifamily Rental License No. M-0129 issued in error for a 6-unit apartment building located in the R-18 (Multifamily Medium Density Residential) Zone, and identified as 831 Fairview Avenue, Takoma Park Maryland.
- (2) No one appeared in opposition at the hearing held by this Examiner.

FINDINGS OF FACT

- (1) The Applicant is the owner of a two-story brick apartment building with 6 dwelling units. Applicant purchased the apartment in 2014, and secured a purchase money deed of trust for the building in excess of \$300,000. (Exhibit 17) It is a registered Limited Liability Company in good standing to transact business in the State of Maryland. (Exhibit 12)
- (2) Research of County files reveals that Multifamily Rental Licenses have been issued to the subject property since 1970. (Exhibit 4 (a)-4(v)) Applicant did secure the requisite Multifamily Rental License for the subject property subsequent to purchase. That license expired on June 18, 2016. (Exhibits 3 and 7) Applicant is seeking to validate this most recent Multifamily Rental License. The Department of Permitting, Inspections and Enforcement has accepted the renewal Multifamily Rental License application for the apartment, and it is undergoing inspection. (Exhibit 16)

(3) Subsequent to its purchase Applicant applied for a change in the Use and Occupancy permit. Staff of the Maryland–National Capital Park and Planning Commission provided the following comment in its review of that Application:

This permit is for a 6 unit apartment building in the R-18 Zone. There are 4 one bedroom units (66.6%) and 2 two bedroom (33.3%). Based on a lot size of 7,498 square feet (0.172 acres) and 6 dwelling units, this property has a density of 34.8 dwelling units per acre. The maximum density currently allowed in the R-18 Zone is 12 units per acre. Tax Assessment indicates the building was constructed in 1950. At this time a minimum of 1800 square feet of net lot area was required per dwelling unit, thus only permitting 4 dwelling units. Also, the provided parking spaces extend into Fairview Avenue, which cannot be counted towards required off street parking. Zoning Map Amendment #829 rezoned the property to Residential C on 9/11/46 with the condition 100% off street parking be provided. Resolution #82-1970 waived off street parking requirements for a large portion of the Hampshire View Subdivision however the waiver did not include Block 5 which is where the property is located. There is no prior use and occupancy permit per Property Standards. Since the property is not in conformance with the regulations in effect at the time of construction in 1950 or current requirements, certification of nonconforming use cannot be pursued. However, the applicant may pursue Validation of Apartment License Issued in Error in accordance with Section 27-258 of the Zoning Ordinance if the apartments were issued an apartment license. Permit 30019-2013-U was placed on hold for this same property with the same comments however the permit was not pursued....

(Exhibit 6 (a))

(4) Applicant submitted floor plans and pictures of the subject property. (Exhibits 14(a)-(c) and 15(a)-(c)) Apartments 1, 2, 3 and 4 are all one-bedroom units. Apartments 1 and 2 are entered from the exterior of the basement. (Exhibits 15(b) and (c)) Apartments 3 and 4 are located on the first level. They and Apartments 5 and 6 are entered from the front door. (Exhibit 15(a)) Apartments 5 and 6 are the two bedroom units located on the top level.

(5) Applicant has expended over \$90,000 on improvements to the subject property in reliance on the most recently issued permit. These improvements include the Multifamily License Application fee, mortgage and trust payments, taxes, trash removal, utility bills, and maintenance. (Exhibits 16, 18 and 19)

(6) Applicant also submitted an aerial of the neighborhood with the subject property outlined in blue. (Exhibits 15(a)-(c)) The subject property's closest neighbors are similar small apartment buildings and a garden style apartment development.

(7) 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. Moreover, there have not been any complaints from, or about, the tenants in the building.

LAW APPLICABLE

(1) The instant permit 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

(1) The instant Application is in accordance with Section 27-258 of the Zoning Ordinance. The request is to validate an apartment license. (Section 27-258 (a))

(2) The record reveals that no fraud or misrepresentation was practiced in obtaining the Use and Occupancy Permit. (Section 27-258(g)(1)(A))

(3) There is no evidence that any appeal or controversy regarding the issuance of the permit was pending before any administrative body at the time of its issuance. (Section 27-258(g)(1)(B))

(4) The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this permit. (Section 27-258 (g)(1)(C))

(5) Finally, the validation will not be against the public interest as the instant Application validates an apartment building that has existed in the surrounding community for over 65 years, adjacent to similar uses, without controversy. (Section 27-258 (g)(1)(D))

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-0129 in accordance with the Site Plan (Exhibit 10) and the Floor Plans (Exhibits 14 (a)-(c)). The apartment building shall be declared to be a Certified Non-Conforming Use, with the condition that there be no further changes to the interior of the site that could result in the creation of another unit.