

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

ERR-240

DECISION

Application:	Validation of Multifamily Rental License M-0017 Issued in Error
Applicant:	Belford Towers, LLC
Opposition:	None
Hearing Date:	November 5, 2014
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) ERR-240 is a request for validation of Prince George's County Multifamily Rental License No. M-0017. The license was issued in error on November 12, 2012 for a 467-unit multifamily apartment complex consisting of three (3) buildings on approximately 9.75 acres located in the R-10 (Multifamily High Density Residential) Zone, also identified as 6731, 6733 and 6735 New Hampshire Avenue, Takoma Park, Maryland.

(2) No one appeared in opposition at the hearing held by this Examiner. The record was left open to allow Applicant to submit floor plans for the apartments, a revised Site Plan and additional information. These items were submitted on January 8, 2015 and the record was closed at that time. (Exhibits 19-27)

FINDINGS OF FACT

(1) The existing multifamily apartment complex was constructed in 1968. (Exhibit 27) The original Use and Occupancy permits were for three buildings containing 160, 144 and 164 units, respectively, for a total of 468 units. (Exhibits 6(a)-(c)) The Apartment Complex includes 23 one-bedroom units, 208 two-bedroom units, and 237 three-bedroom units. (Exhibit 27)

(2) Applicant provided photographs and an aerial of the property and its surroundings. (Exhibits 16(a)-(j) and 20)

(3) The Applicant noted that the apartment has been continually occupied from approximately 1969 to the present.

- (4) The complex also includes a Day Care Center for up to 50 children, allowed pursuant to SE-2211 and Use and Occupancy Permit No. 686031-U.
- (5) Applicant purchased the subject property in 2000 for approximately Five Million Dollars. (Exhibit 14) Multifamily Rental Housing License No. M-0017 was most recently issued to its management and oversight teams (Beacon Management and the Light Stone Group, respectively) in 2012. (Exhibit 7; T, 6) This license authorized the rental of 467 units.
- (6) Applicant became aware of the need for the Application upon its refinancing of the apartment complex. (T. 35-36)
- (7) The Permit Review Section of the Maryland-National Capital Park and Planning Commission provided the following synopsis in its review of an application to certify the nonconforming apartment complex at the subject property:

This permit is for the certification of nonconforming use for an existing multifamily project in the R-10 Zone constructed pursuant to [permit] 9833-9835-C, approved 5/22/68. Certification of nonconforming use is required because the site exceeds bedroom percentages by providing 50.7% three bedroom units. Bedroom percentages were adopted on 10/1/68. However per the site plan submitted a total of 585 parking spaces are required based on 468 dwelling units however only 557 are provided (deficit of 28 spaces). Copies of prior approved plans in the multifamily microfilm were approved showing 586 parking spaces provided. I met with Larry Taub and Stephanie Anderson and they may pursue either Validation of Apartments License or Permit Issued in Error. [Permit] 684474-U was issued 9-11-69 for 160 units. Permit 686031-U was issued 12-31-69 for 164 units. Permit 686004-U was issued 12-12-69 for 144 units. The three permits total 468 units...

A site plan containing a certificate of approval from the Prince George's County Planning Board dated May 8, 1968, was in the multifamily microfilm for these apartments. Site Plan [a]pproval was required due to one of the apartments exceeding the 110 foot maximum height allowed in the R-10 Zone. Section 18.6 of the 1964 Zoning Ordinance allowed the Planning Board to approve a site development plan for a height greater than 110 feet. The building [permit] 9833-9855-C [was] subsequently approved 5/22/68. There is correspondence in the file dated 8-5-68 from Jim Hennessey, M-NCPPC, indicating that it was brought to their attention that the property did not contain enough R-10 zoned land to permit 468 units. It further says that staff recommends that the Planning Board action of May 8, 1968, approving the subject site be rescinded. It further says that only 465 units would have been permitted. There is a copy certified site plan in the microfilm file clearly showing the 468 units however it does not contain an approved permit stamp on it. A total of 468 units were constructed and issued use and occupancy permits.

The property does contain 9,750 acres of R-10 zoned land which does support the 468 units. If a validation is pursued it will also validate this issue....

(Exhibit 3)

(8) The Permit Review Section noted other minor inconsistencies with the Site Plan provided by Applicant. Applicant’s witness stated that these were addressed in its revised Site Plan. (T. 39-40)

(9) Applicant purchased the property in 2000 with the intent of operating a 467-unit¹ apartment complex. (Exhibit 14; T.7-8, 11) Since that time it has expended millions of dollars in operating expenses such as repair and maintenance of the units, landscaping, utilities, taxes and insurance. (Exhibit 15; T. 13-14)

(10) The property appears to be well maintained. (Exhibits 16(a)-(j)) It is surrounded by residential properties and a small neighborhood shopping center. (T. 20)

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.

¹ Applicant notes that there are presently 468 units on site. (T.22) However, the multifamily license issued only permitted 467 units; therefore, only 467 units may be validated.

(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 Bedford Towers Apartments have been licensed by Prince George’s County for 467 dwelling units since 2012 pursuant to Multifamily Rental License No. M-0017. The Applicant has applied for, but is unable to obtain, a valid Use and Occupancy Permit for the subject property. (Exhibit 5) No fraud or misrepresentation was practiced in obtaining the Multifamily Rental License. The Applicant has acted in good faith, expending 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. 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 1969.

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-0017. The 467dwelling unit apartment complex on the subject property shall be declared to be a Certified Non-Conforming Use, in accordance with the Site Plan and Floor Plan, with the condition that these be revised to reflect that the total number of units is 467. One of the units must be removed. (Exhibits 23 and 39(b)-(e)) If this change necessitates changes to the remaining tables, they must also be amended. The revised Site Plan should be submitted to the Office of the Zoning Hearing Examiner for review and approval, prior to the issuance of permits.