

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

ERR-246

DECISION

Application:	Validation of Multifamily Rental License M-0175 Issued in Error
Applicant:	Chesapeake Landing, LLC.
Opposition:	None
Hearing Date:	March 18, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-246 is a request for validation of Prince George's County Multifamily Rental License No. M-0175. The license was issued in error for the Chesapeake Landing Apartments, located at 7501, 7503, 7505, 7507, 7509, 7511, 7513, 7515, 7519, 7521, 7523, 7525, 7527, and 7529 Buchanan Street, Landover Hills, Maryland.
- (2) The subject property consists of fourteen (14) buildings spread across 7.9416 acres in the R-18 (Multifamily Medium Density Residential) Zone.¹ It includes a total of 174 apartment units.
- (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 some additional information. These items were received on March 25, 2015 and the record was closed at that time.

FINDINGS OF FACT

- (1) The Apartment buildings were constructed by relatives of the Applicant's managing partner. Permits were approved for the units in two phases - 98 in 1966,² and 72 in 1972. The units are located in buildings with four apartments on each floor. Applicant submitted a floor plan for the units. (Exhibit 28(b))

¹ Applicant's land planner explained that the fourteen "building" entrances are really grouped into seven structures. (Exhibit 27; T. 29-30)

² Applicant's witness believes the number of units constructed in the two phases were 102 in 1966 and 72 in 1972 .

(2) The original owners of the subject property created an LLC (the Applicant) in 1996 and transferred ownership to the LLC at that time. The LLC applied for a new Multifamily Rental License in 1998 and it was issued for 174 units. (Exhibit 13(n)) These licenses have been reissued since that time and the most recent license was issued on June 3, 2012. This is the license that Applicant requests to be validated. (Exhibit 14(e))

(3) In 2014, Applicant sought renewal of its rental license and was informed by DPIE that it would also need a new Use and Occupancy permit in the LLC's name. Once the Permit Review Section of the Maryland-National Capital Park and Planning Commission reviewed the application for Use and Occupancy Permit 44936-204-U, it advised Applicant of the need to file the instant request:

This permit is for Chesapeake Landing Apartments which is zoned R-18 and contains 174 dwelling units. Per the site plan submitted the apartments will be pursuing Validation of Apartment License Issued in Error. The apartments were constructed in 2 phases with permits approved for Section I in 1966 for 98 units and Section II was approved in 1972 for 72 units. The site plan approved pursuant to permit 653-72-CG for Section II (7519-7529 Buchanan Street) provided a total of 170 dwelling units. Per the site plan submitted a total of 174 dwelling units exist in the complex. The 174 units does not comply with the minimum lot area per dwelling unit requirement of 2,000 s.f. that was required in 1972 by providing only 1988 s.f. per dwelling unit. Based on a lot size of 7.9416 acres a maximum of 173 units would have been permitted. Multifamily Rental Licenses were issued by the County for 173 dwelling units from 1974 until 1998 when the number of units increased to 174 units. Subsequent Multifamily Rental Licenses have been issued by the County for 174 dwelling units from 1998 to the present date. The site exceeds current maximum density requirements of the R-18 Zone by providing a density of 21.9 units per acre and a maximum of 12 units per acre is currently permitted. In addition, the complex exceeds bedroom percentages which were adopted in 1968. Therefore since Multifamily Rental Licenses have been issued by the County for the 174 dwelling units, Validation of Apartment License issued in Error will be pursued.

(Exhibit 4)

(4) Ms. Hampton found additional problems with Applicant's Site Plan and suggested revisions. These were made, and have been ratified by Ms. Hampton. (Exhibits 26(a)-(b) and 27)

(5) 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. (T. 13)

(6) Applicant expended approximately Four Million Dollars on capital improvements (including the replacement of roofs, windows, and renovation of each apartment unit) since the transfer from the original owners to the LLC, and \$163,000 since issuance of the license that is the subject of this Application. (Exhibit 19; T. 12-14)

(7) The property appears to be well maintained. It is surrounded by a post office, churches, and an office community. (Exhibits 21 and 23; T. 16)

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 174-unit Apartments were approved by Prince George's County upon

its issuance to the Applicant and reissuances until the present time of Multifamily rental license M-0175 in 1998.

(2) 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-0175 and declare it to be a Certified Non-Conforming Use, in accordance with the Site Plan and Floor Plan. (Exhibits 27 and 28(b))