

Case No.: ERR-238

Applicant: Alvin E. Courtney, Jr.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

ORDER OF REMAND

IT IS HEREBY ORDERED, having reviewed the evidence within the administrative record, and the testimony at oral argument conducted on June 22, 2015, that the application to approve ERR-238, an uncontested request for validation of Multifamily Rental Housing License No. M-1066, issued in error on July 6, 2013, for an apartment building containing three (3) multifamily dwelling units, located on approximately 0.23 acre of land in the R-55 (One-Family Detached Residential) and Gateway Arts District D-D-O (Development District Overlay) Zones, identified as 3505 Varnum Street, Brentwood Company Subdivision, Town of Brentwood, Planning Area 68, Council District 2, be and the same is:

REMANDED, pursuant to §§ 27-131–27-133 of the Zoning Ordinance, as well as provisions of Title 22 within the Land use Article of the Annotated Code of Maryland.

Based on our review of the evidence within the administrative record, as well as the testimony offered at the oral argument proceedings conducted on Monday, June 22, 2015, regarding Applicant's exceptions to the April 8, 2015, disposition recommendation of the Zoning Hearing Examiner, we take administrative notice of statements by Applicant's attorney and the comments offered by the People's Zoning Counsel as to several ambiguities regarding the current and previous configuration of the three (3) multifamily dwelling units contemplated by the multifamily rental license. *See generally* 06/22/2015 Tr.; 05/07/2015 App. Mem., Scudder to Floyd, at 1 & Att. 11(B). We further note the conflicting testimony and evidence concerning the history of any basement rental occupancy on the property in the administrative record. In

addition, the Applicant also presented testimony at the oral argument proceedings concerning the status of the multifamily use on the property as nonconforming. *Id.* Because we are unable to render a final decision without additional information that is absent from the record, we must remand this matter to the Zoning Hearing Examiner to reopen the record to allow Applicant the opportunity to submit additional information and/or testimony as to the current configuration of the multifamily dwelling units comprising the existing use, and any proposed modifications to the configuration of the dwelling units for the use, in considering the subject application.

Moreover, after review of the record and testimony offered at the June 22, 2015, oral argument before the District Council as to Applicant's exceptions, we determined that a remand is also needed to allow an opportunity for Applicant to submit additional information concerning the history of any basement rental occupancy on the property, as well as an opportunity to present evidence to support his contention, as articulated through counsel, that there is currently a nonconforming use on the property. *See* 06/22/2015 Tr.

Accordingly, on remand, the Zoning Hearing Examiner ("ZHE") shall reopen the record for ERR-238, and conduct a public hearing or hearings to receive and evaluate additional testimony and evidence, as follows:

1. On Remand, the ZHE shall allow Applicant the opportunity to submit any additional information and arguments concerning the current configuration of the multifamily dwelling units comprising the existing use, and any proposed modifications to the configuration of the dwelling units, for inclusion in the record for the proposed validation of Multifamily Rental License No. M-1066 on the subject property.
2. On Remand, the ZHE shall allow Applicant the opportunity to submit any additional information and/or testimony concerning any basement rental occupancy for inclusion in the record in evaluating the proposed validation of Multifamily Rental License No. M-1066 on the subject property.

Ordered this 6th day of July, 2015, by the following vote:

In Favor: Council Members Franklin, Davis, Harrison, Lehman, Patterson, Taveras,
Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Glaros

Vote: Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council