

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

ERR-255

DECISION

Application: Validation of Multifamily Rental License No.
M-0845 Issued in Error
Applicant: Cheryl Burgess Carter
Opposition: None
Hearing Date: January 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-0845 issued in error for a 6-unit apartment 'building located in the R-R (Rural-Residential) Zone, and identified as 8212 Bellefonte Lane, Clinton, Maryland.
- (2) 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 additional information. Applicant submitted the last of the information on February 10, 2016, and the record was closed at that time.

FINDINGS OF FACT

- (1) The Applicant is the owner of a 2-story, (and basement), brick multifamily apartment building located at 8212 Bellefonte Lane, Clinton, Maryland. The building consists of six units – one 1-bedroom unit and five 2-bedroom units. There are two units in the basement, two units on the first floor, and two units on the second floor.
- (2) Ms. Burgess Carter purchased the apartment building in 2000. (Exhibit 3) She was not advised at that time that she needed to obtain a new Use and Occupancy Permit for the property. She did secure the requisite Multifamily Rental License and it has been reissued for the subject property since the time of purchase. (Exhibits 4(a)-(b))
- (3) Applicant is seeking to validate the most recent Multifamily Rental License issued for the period of August 1, 2014 – August 1, 2016. (Exhibit 4(h))
- (4) After being notified of the need to obtain a Use and Occupancy Permit, Applicant

applied for one. (Exhibit 8) The Permit Review Section of the Maryland-National Capital Park and Planning Commission advised Applicant of the need to file the instant request upon its review of the Application for Use and Occupancy Permit No. 25427-2014-U:

1. This permit is for an existing 6 unit multifamily dwelling in the R-R Zone. Per tax assessment the building was constructed in 1960, which predates the zoning annexation date of April 24, 1961. I have placed a call to Property Standards Division of Dpie and they are researching their records to see if there is a prior use and occupancy permit for the multifamily dwelling that would have already certified it as a nonconforming use. If there is then the applicant need only submit documentation of continuous operation from the date of the issuance to the present date. However, if they cannot find a prior issued use and occupancy permit then the use must be certified as nonconforming by the Planning Board. Additional comments will be generated once PSD confirms prior permit history. I called and discussed the comments with Cheryl Burgess. **7/24/14 – Per PSD there is no prior use and occupancy permit for the apartments. They do have a file for the multifamily licenses going back to 1970 but no prior permits. Therefore the multifamily dwelling must be certified as a nonconforming use and since there is no prior use and occupancy permit the certification must be heard by the Planning Board. The applicant must contact Edward Holley at 301-952-3215 for information and instructions regarding this process. I emailed the updated comments to Cheryl Burgess Carter.**

11/16/15 – Taslima Alam is the planner reviewing the NCU certification. She said while reviewing the rental license history apparently the building was license[d] for only 5 units. Then in the late 1990's the building was licensed for 6 units. This was an alteration of a nonconforming use. The applicant has the option of certifying the 5 units and pursuing a special exception for the 6th unit or file for Validation of Apartment License Issued in Error. The applicant called me today and we discussed the options.

(Exhibit 9; emphasis in original)

(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.

(6) Applicant has expended approximately \$6,300 on improvements to the subject property in reliance on the most recently issued permit. These improvements include plumbing, drywall and electrical repair, carpet installation, flooring installation, bathroom repairs and replacement of doors. (Exhibit 18, 22 and 23)

(7) Applicant submitted water bills from the Washington Suburban Sanitary Commission ("WSSC") which indicate that it has provided water to six units at the subject property. WSSC has charged over \$5,000 since the issuance of the most recent multifamily license. (Exhibit 19)

(8) Applicant submitted photos of the basement area. A laundry room and electric meters occupy that portion of the basement that is not a dwelling unit. (Exhibits 20(a) and (b))

(9) The Applicant submitted exterior photos of the subject apartment. (Exhibits 5(a)–(g)) They reveal a well maintained, brick apartment buildings; surrounded by similar apartment buildings

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.

* * * * *

(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 55 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-0845 in accordance with the Site Location Plat (Exhibit 7) and the Floor Plans (Exhibit 14). 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.