

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

ERR-262

DECISION

Application: Validation of Multifamily Rental License No. M-1160 Issued in Error
Applicant: Westwood Place Apartments, LLC
Opposition: None
Hearing Dates: December 7, 2016 and December 21, 2016
Hearing Examiner: Maurene Epps McNeil
Recommendation: Approval with condition

NATURE OF PROCEEDINGS

- (1) ERR-262 is a request for validation of Prince George's County Multifamily Rental License No. M-1160 issued in error for a 246-unit apartment building located in the R-18 (Multifamily Medium Density Residential) Zone, and identified as 7200 Jaywick Avenue, Fort Washington, Maryland.
- (2) No one appeared in opposition at the hearings held by this Examiner.¹

FINDINGS OF FACT

- (1) Applicant is a registered Limited Liability Company in good standing to transact business in the State of Maryland. (Exhibit 24(b)) Applicant purchased the property in 2000 from an entity that owns the Westwood Place Apartments, LLC. This entity has owned the subject property since 1977.
- (2) The apartment complex consists of a 10-story building located on an 11.65 acre parcel. There are a total of 246 dwelling units, which consist of 123 one-bedroom, 99 two-bedroom and 24 three-bedroom units (discussed *infra*).
- (3) The R-18 Zone limits density to 20 dwelling units per acre for multifamily buildings higher than 3 stories with an elevator. Applicant's research reveals that the

¹ Applicant's counsel requested a continuance at the start of the first hearing because its primary witness was unable to be in attendance.

subject multifamily development was constructed in violation of this provision.²

(4) Research of County files reveals that Multifamily Rental Licenses have been issued to the subject property for many years. Applicant is seeking to validate its most recent Multifamily Rental License, based on October 6, 2015 and expiring on October 6, 2017. (Exhibit 21)

(5) Staff of the Maryland–National Capital Park and Planning Commission provided the following comment in its review of the zoning history of the subject property:

This permit is for an existing apartment project in the R-18 Zone constructed pursuant to permits 615-618-72-CG. The total number of dwelling units and unit mix must be provided. Per the approved site plan in M-NCPPC records a total of 246 units were approved of which 123 units were one bedroom, 99 units [were] two bedroom (40.2%), and 24 units were 2 bedroom with den (considered 3 bedroom 9.75%). If the site exceeds the current maximum density of the R-18 Zone, which is 12 units per acre (or up to 20 units per acre if building is 4 or more stories and has an elevator), then certification of nonconforming use will be required. If the site does contain 246 dwelling units as approved, then based on a lot size of 11.65 acres the density is 21.1 units per [acre] and certification will be required. Property Standards is currently researching to see if there is a prior issued use and occupancy permit.... *9/28/15- Per Donna Dolce there are 246 dwelling units of which 123 one bedroom, 96 two bedroom (39.02%), and 27 three bedroom (10.97%). Based on a lot size of 11.65 acres the density is 21.1du/acre therefore, the apartment became nonconforming with regards to density on 5/6/75 and certification would normally be required. HOWEVER – it appears that 3 two bedroom units were made into three bedrooms has resulted in exceeding the maximum allowable percentage of three bedrooms which is 10%. Per Section 27-419(b) of the Zoning Ordinance if the percent of variation is less [than] 10, then a special exception would not have been required to make this change. However the percent of variation for the three bedroom units is approx. 12.51%. Therefore a special exception would have been required for this variation which was not done. Therefore the applicant could possibly pursue certification of nonconforming use and a special exception for the variation of bedroom percentages. Otherwise the applicant can pursue Validation of Apartment License Issued in Error. Per Property Standards there is no prior use and occupancy for the apartments, only for the sales office and model apartments, temporary construction office, and swimming pool....*

(Exhibit 10(d))³

(6) Applicant submitted floor plans for the 10-story apartment building and its surrounds and pictures of the subject property. (Exhibits 23 (b), (c) and (d), and 24 (c) and (d)) The license issued for the subject property did not reflect the actual breakdown of bedrooms in

² (Section 27.442 (h))

³ This comment is apparently a later revision to Exhibit 4 although it is not expressly denoted as such.

each unit. Applicant's witness testified that there have always been a total of 246 units, consisting of 123 one-bedroom, 96 two-bedroom, and 27 three-bedroom units. (Exhibits 20 and 23 (a))

(7) In just one month in 2016, in reliance on the most recently issued permit, Applicant expended over \$157,624.14 on improvements to the subject property. (Exhibit 11) These improvements included utility payments, dry wall repair, painting and landscaping. (Exhibits 17)

(8) Applicant also submitted an aerial of the neighborhood and the subject property. (Exhibits 24(c) and (d)) The subject property's closest neighbors are primarily single-family dwellings.

(9) Applicant's witness 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 has been a steady stream of great tenants in the building over the years. The units are in great demand - many renting at, or near, market rates. (Exhibit 23 (a))

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 license. (Section 27-258(g)(1)(A))

(3) There is no evidence that any appeal or controversy regarding the issuance of the license 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 license. (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 40 years, in an established residential neighborhood, without controversy. (Section 27-258 (g)(1)(D))

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-1160 in accordance with the Site Plan (Exhibit 10(c)) and the Floor Plans (Exhibits 23(b), (c) and (d)). 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.