

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

ERR-265

DECISION

Application: Validation of Multifamily Rental License
No. M-130 Issued in Error
Applicant: Ali I. Tangoren Family Settlement Revocable
Family Trust/ Ali I. Tangoren, Trustee¹
Opposition: None
Hearing Dates: March 29, 2017 and July 24, 2017
Hearing Examiner: Maurene Epps McNeil
Recommendation: Approval with Conditions

NATURE OF PROCEEDINGS

(1) ERR-265 is a request for validation of Prince George's County Multifamily Rental License No. M-130 issued in error for a 4,236 square-foot, 6-unit apartment building located in the R-18 (Multifamily Medium Density Residential) Zone, (Lot 2, Block 5, Hampshire View Subdivision), and identified as 833 Fairview Avenue, Takoma Park, Maryland.

(2) No one appeared in opposition at the hearings held by this Examiner. Representatives from the Department of Permitting, Inspections and Enforcement ("DPIE") provided testimony at the second hearing.

(3) At the conclusion of the first hearing the record was left open to allow the applicant to submit photographs, floor plans, copies of invoices, receipts, and other documents concerning the financing and ownership of the site. This Examiner held a second hearing to discuss these items and the general state of the property, to ensure that approval of the request would not be against the public interest. (Exhibit 17; July 24, 2017 T. 3) The representatives from DPIE submitted pictures of the subject property and its surrounds but Applicant failed to submit all of the requested items, as discussed *infra*.

FINDINGS OF FACT

(1) The subject property is approximately 7,000 square feet (0.1606-acre) in size. Applicant purchased the property in 2006, and transferred the property via a non-arm's length transaction to the Ali I Tangoren Family Settlement Revocable Trust. (Exhibit 23)

¹ The record identifies the Owner as both Ali "L" and Ali "I" Tangoren. (Exhibits 21, 22 and 23)

The apartment is a two-story building with basement and was constructed in 1950. (Exhibit 11) There are a total of 6 dwelling units, all of which are one-bedroom. Applicant charges a reasonable rent of \$800 monthly, approximately “30 percent below market value.” (March 29, 2017 T. 25). At the time of the first hearing Applicant had one vacancy. (March 29, 2017 T. 24-25)

(2) Applicant is seeking to validate its most recent Multifamily Rental License, issued on November 23, 2015 and expiring on November 23, 2017. (Exhibit 5)

(3) 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 a 6 unit apartment building located at 833 Fairview Avenue (Lot 2, Block 5, Hampshire View Subdivision). The property is zoned R-18 and all of the units are one bedroom. Based on a lot size of 7,000 square feet (0.1606 acres) and 6 dwelling units, this property has a density of 37.3 dwelling units per acre. The maximum density currently allowed in the R-18 Zone is 12 units per acre. Tax Assessment indicates the building was constructed in 1950. At this time a minimum of 1800 square feet of net lot area was required per dwelling unit, thus only permitting 4 dwelling units. Also, the provided parking spaces extend into Fairview Avenue, which cannot be counted towards required off street parking. Zoning Map Amendment #829 rezoned the property to Residential C on 9/11/46 with the condition that 100% off street parking be provided. Resolution #82-1970 waived off street parking requirements for a large portion of Hampshire View Subdivision, however this waiver did not include Block 5 which is where this property is located. Permit 5608-U was issued on 5/21/62 to the property for the apartments. Since the property is not in conformance with the regulations in effect at the time of construction in 1950 or current requirements, certification of nonconforming use cannot be pursued. However, the applicant may pursue Validation of Permit Issued in Error for permit 5608-U in accordance with Section 27-258 of the Zoning Ordinance....²

(Exhibit 2)

(4) Applicant did not submit floor plans for the apartment building³, but did provide pictures of the subject property. (Exhibit 15(a)-(f)). The subject property is surrounded by similar 6-unit multifamily dwellings and a few larger multifamily developments. (Exhibit 21)

² Applicant did not choose to validate Permit #5608-U, as noted above. Comments on Exhibit 4 indicate that this Permit for the 6-unit building was issued in 1962.

³ Exhibit 23 purports to include a floorplan as Appendix 6 but that page is blank.

(5) Applicant testified that it had to obtain a commercial loan in the amount of \$163,000 in 2016 with the intent to use some or all of the proceeds on improvements to or maintenance of the subject property. (Exhibit 23; March 29, 2017 T. 18) At that time, over \$2,000 was paid as County Transfer tax, and over \$7,000 in real estate taxes. (See, HUD 1 attached to Exhibit 23) Applicant did not submit additional receipts for expenditures pertaining to the subject property that occurred between November 2015 and now.

(6) 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. (March 29, 2017 T. 13)

(7) The representatives from DPIE, Inspector Sonny Kamara and Inspector James Laws, have visited the subject property and submitted a compilation of photos taken in 2016 and 2017 that include the surrounding properties as well. This Examiner divided the Exhibit into pictures pertaining to the subject property (Exhibit 25(a)) and those pertaining to the surrounding properties (Exhibit 25 (b)). The Inspectors noted that there were no outstanding violations concerning the subject property, other than the need to acquire a use and occupancy permit. (July 24, 2017 T.10)

(8) The subject property, as well as surrounding multifamily dwellings, has no on-site parking for their tenants. (Exhibit 20; March 29, 2017 T.12;) The Inspectors noted that lack of parking spaces and the practice of putting trash dumpsters in areas designed for street parking is an ongoing problem in the area:

Mr. Brown: Concerning this property, are there any trash bins out on the street ... [and] [w]hy haven't you issued a citation concerning the dumpster? Is the dumpster legal in terms of where it's located on the property?

Mr. Laws: We received several complaints from the County Police, neighboring property owners, of the trash and debris around the dumpster that's ... to the right of his front door ... of his property....

Mr. Brown: All right. Is the dumpster located in ... the street?

Mr. Laws: It's located ... in the street, or it's ... taking up parking spaces for tenant parking.

Mr. Brown: All right – How does DPIE allow that to occur? That is not permitted ... to put a dumpster in a parking space, or in the street?

Mr. Laws: It's an arrangement that's trying to be worked out between DPIE and the property owners where they're trying to clean up the property, and find designated locations to put the dumpsters....

Ms. McNeil: And is there any area in the rear to [place] the dumpster?

Mr. Kamara: No ... not that the trash truck can access....

(July 24, 2017 T. 10-12)

(9) Applicant does not utilize the smallest commercial dumpsters on the site, and trash is currently picked up once a week, on Wednesday. (July 24, 2017 T. 20) It was suggested that a smaller dumpster be used and that Applicant contract for more frequent pick-ups. There is no room for trash storage inside of the apartment building. (July 24, 2017 T. 24)

(10) Applicant was asked to contact the owner of an adjacent lot to determine whether the land could be leased and the dumpsters relocated. In the alternative, it was asked to determine whether an enclosure could be built on the subject property for placement of tenant trash cans. (July 24, 2017 T. 34-38) Applicant did not submit any additional information on either of these requests.

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.

* * * * *

CONCLUSIONS OF LAW

(1) The instant Application is in accordance with Section 27-258(a) 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) However, the validation without condition may be against the public interest. Although the apartment building has existed in the surrounding community for nearly 70 years, in an established residential neighborhood consisting of similar multifamily dwellings, the dumpster location is an eyesore and illegally located within the right-of-way. Applicant should remove the current dumpster and have its tenants bring the trash out each trash pick-up day and/or provide a much smaller dumpster that can be wheeled out on pick-up day. (Section 27-258 (g)(1)(D))

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-130 in accordance with the location drawing (Exhibit 3), provided:

- (1) Applicant submits a floor plan showing the number and approximate size of each of the six units within two weeks of the District Council's approval of the Application. The floor plan will then be included in the record;
- (2) The dumpster be removed from the right-of-way and tenants be directed to bring their trash out on trash pick-up day(s). Applicant may also place a smaller movable dumpster on site if located in a sight-tight enclosure;
- (3) There shall be no further changes to the interior of the site that could result in the creation of another unit; and
- (4) The apartment building shall be declared to be a Certified Non-Conforming Use.