

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

ERR-267
REMAND

DECISION

Application:	Validation of Multifamily Rental License No. M-369 Issued in Error
Applicants:	Vizion Realty, LLC
Opposition:	None
Hearing Dates :	January 24 and February 14, 2018
Hearing Examiner:	Joyce B. Nichols
Recommendation :	Approval

NATURE OF PROCEEDINGS

- (1) ERR-267 is a request for validation of Prince George's County Multifamily Rental License No. M-369 issued in error for a 15 unit apartment building, located in the M-U-TC (Mixed-Use Town Center) and the D-D-O (Development District Overlay) (Southern Green Line) Zones, and identified as 4785 Huron Avenue, Suitland, Maryland.
- (2) No one appeared in opposition and the record was kept open for additional documents, upon receipt of which the record was closed April 21, 2017.
- (3) On May 9, 2017, the Zoning Hearing Examiner issued her recommendation of approval of the requested validation.
- (4) After oral argument, by notice dated November 9, 2017, the District Council remanded this Application to the Zoning Hearing Examiner to allow additional interested parties to become persons of record and to conduct An additional evidentiary hearing regarding any Code violations and regarding the onsite refuse collection situation including any allegation of illegal dumping on the subject property. (Exhibit R-2(b))

FINDINGS OF FACT

- (1) The subject three-story brick structure was constructed on the subject property in 1954, in the R-18 (Multifamily Medium Density Residential) Zone, (Exhibit 4), and contains 15 dwelling units. (Exhibit 28)
- (2) Prince George's County has issued Multifamily Dwelling Licenses on the subject property

for 15 apartment units from, at a minimum, 1989 to the present. (Exhibits 6 and 7)

(3) The Applicant, a limited liability company in good standing in Maryland, purchased the subject property in July, 2003. (Exhibits 5 and 27)

(4) The Applicant received a Zoning Violation Notice dated September, 2016 for the operation of an apartment building without a valid Use and Occupancy permit. (Exhibit 11)

(5) The subject property is 23,522.4 square feet in size. In 1954 a minimum of 1800 square feet of net lot area per dwelling unit was required along with one off street parking space per dwelling unit. The 15 dwelling units only result in 1568.16 square feet net lot area per dwelling unit, permitting a maximum of 13 dwelling units. Fifteen parking spaces are required and only 9 grandfathered in size off street parking spaces are provided. (Exhibit 4 and 9)

(6) Seven (1) bedroom units and eight (2) bedroom units are provided. (Exhibit 28)

(7) After required notice, the Office of the Zoning Hearing Examiner conducted additional evidentiary hearings on remand. No new interested person attended this evidentiary hearing. Mr. Carlton Sellman, an Inspector with the Department of Permitting, Inspections and Enforcement, testified as to the history of the refuse collection situation and also to any Code violations. There are currently no Code violations on the subject property.

(8) The Applicant also testified as to the history and current state of the refuse situation. The Applicant has moved the refuse collection area towards the front of the subject property and this has helped ameliorate the illegal dumping situation. The Applicant provided an Amended Site Plan (Exhibit R-11) indicating the relocation of the refuse collection area.

LAW APPLICABLE

(1) An apartment license may be validated as issued in error in accordance with §27-258 of the Zoning Ordinance. §27-258 states in pertinent part:

(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 anybody;

(C) The Applicants has acted in good faith, expending funds or incurring obligations in reliance on the permit; and

(D) The application meets the criteria of section 27-244 of this subtitle; and

(E) 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 filed in accordance with §27-258 of the Zoning Ordinance. Prince George's County has licensed the subject property for 15 units since 1989, at a minimum. The Applicant has applied for Use and Occupancy Permit 30861-2015-01 for a 15 unit apartment building (Exhibits 19-21), but, due to the illegal status of the subject property, this Use and Occupancy Permit cannot be issued. Mr. William Philips, the managing member of Vizion Realty, LLC, testified that to the best of his knowledge no fraud or misrepresentation was practiced in obtaining Multifamily Rental License No. M-369 for 15 dwelling units. The Applicant has acted in good faith, expending funds or incurring obligations in reliance on these permits. (Exhibits 23-26,31) There are no existing Code violations regarding the subject property other than the failure to have a valid Use and Occupancy Permit. The validation will not be against public interest as the instant Application merely validates a use that has existed on the subject property for almost 65 years. The size and shape of the existing structure is consistent with that of the existing area. (Exhibits 13 and 14). §27-258

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-369. The use of the subject structure as a 15 dwelling unit apartment building with related parking shall be declared to be a Certified Non-Conforming Use. The Amended Site Plan is Exhibit R-11 and the Unit Location Plan is Exhibit 28.