

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

**ERR-268
ON REMAND**

DECISION

Application:	Validation of Multi-Family Rental License No. M-0131 Issued in Error
Applicant:	Carline Brice
Opposition:	None
Hearing Date:	August 21, 2018
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Denial

NATURE OF PROCEEDINGS

(1) ERR-268 is a request for validation of Prince George's County Multi-Family Rental Housing License No. M-0131 issued in error on April 18, 2015, for six (6) apartment units, on approximately 7448 square feet of land, located in the R-18 (Multi-Family Medium Density Residential) Zone, also identified as 835 Fairview Avenue, Takoma Park, Maryland.

(2) No one appeared in opposition and the record was closed at the conclusion of the evidentiary hearing.

(3) On September 27, 2017 the Zoning Hearing Examiner issued its recommendation of denial based on the Applicants failure to provide any testimony or evidence in support of the instant Application as required by law. On March 9, 2018 the District Council adopted an Order of Remand to the Zoning Hearing Examiner to permit the Applicant to obtain an attorney and provide evidence on her Application.

(4) The Applicant obtained an attorney and both the Applicant and her attorney Traci Scudder appeared at the evidentiary hearing on June 27, 2018, but the Applicant again failed to provide sufficient evidence supporting her Application as required by law.

(5) Your Examiner, the Applicant, and Applicant's attorney discussed at length the scheduling of an additional hearing date to allow the Applicant a third opportunity to provide legally sufficient evidence in support of her Application. (June 27, 2018, T.p. 33-39) On the record the Applicant and her attorney agreed to the continuance of the evidentiary hearing to August 21, 2018.

Ms. Nichols: "All right, that being said, this matter is continued until the 21st of August. Thank you very much".

Ms. Scudder: "Thank You". T.p. 38

(6) Neither the Applicant nor her attorney appeared at the August 21, 2018 hearing. When Ms. Poteat (Office of the Zoning Hearing Examiner) called Ms. Scudder on August 22, 2018 to find out why she and her client failed to show at the August 21st hearing, Ms. Scudder stated that she had failed to place the hearing date on her schedule.

FINDINGS OF FACT

- (1) The instant three story detached structure was constructed in 1950. (Exhibit 14)
- (2) The subject property has been issued Apartment Licenses for six (6) dwelling units beginning in 1970. (Exhibits 5 and 6)
- (3) The subject structure exceeds the maximum density of twelve (12) dwelling units per acre in the R-18 Zone as the occupied density is 35.2 dwelling units per acre. (Exhibit 14)
- (4) In 1950 a minimum of 1800 square feet of net lot area was required per dwelling unit thus permitting only four (4) dwelling units on the subject property. (Exhibit 14)
- (5) The required off street parking spaces are not provided. (Exhibit 14)
- (6) The Applicant applied for a Use and Occupancy Permit for six (6) dwelling units in 2015. This Application has never been pursued and it is unknown, 2 1/2 years later, whether this Application is currently active. (Exhibit 15)
- (7) On May 1, 2015, the Maryland National Capitol Park and Planning Commission provided the Applicant with the statute and criteria for approval of a permit (license) issued in error. (Exhibit 14)
- (8) On April 14, 2017, the County Department of Permitting, Inspections and Enforcement also provided the Applicant with the statute and criteria which must be met prior to approval of a permit (license) issued in error. (Exhibit 2)
- (9) By email dated April 25, 2017 the Office of the Zoning Hearing Examiner provided the Applicant with the statute and the criteria which must be met prior to approval of the instant Application.

LAW APPLICABLE

- (1) A Use and Occupancy Permit or 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 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) Despite being repeatedly provided copies of the governing law, the Applicant provided little to no evidence in support of her Application.

(2) The Applicant failed to provide little if any testimony or evidence as to any Use and Occupancy permit for the subject property or any evidence regarding the establishment of the six (6) dwelling units on the subject property.

(3) The Applicant failed to provide little if any testimony or evidence regarding whether fraud or misrepresentation was practiced in obtaining the Apartment License. §27-258(g)(1)(A)

(4) The Applicant failed to provide little if any testimony or evidence regarding whether any appeal or controversy existed at the time of the issuance of the Apartment License. §27-258(g)(1)(B)

(5) The Applicant failed to provide little if any testimony or evidence that the Applicant has acted in good faith, expending funds or incurring obligations in reliance on the Apartment License. §27-258(g)(1)(C)

(6) The Applicant failed to provide little if any testimony or evidence that the validation of the Apartment License will not be against public interest. §27-258(g)(1)(D)

(7) In conclusion, the Applicant failed to provide little if any testimony or evidence in support of the instant Application as required by law despite having repeatedly been provided copies of the law in question. It is the Applicants burden of proof to provide the supporting evidence to the trier of fact to make the required findings prior to the granting of the Application and the Applicant has completely failed to provide any evidence at all in support of the Application.

RECOMMENDATION

It is recommended that the District Council deny the validation of Multi-Family Rental License No. M-0131.