

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

ERR-265

**REMAND
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, Trustee ¹
Opposition:	Takoma Branch Civic Association
Hearing Date:	August 8, 2018
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Remand

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 initial hearing or the remand hearing held by this Examiner. A representative of the Tacoma Branch Civic Association submitted an email in opposition to the request and representatives from the Department of Permitting, Inspections and Enforcement ("DPIE"), the Prince George's County Police Department, and the Prince George's County Sheriff's Department 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.

(4) This Examiner ultimately recommended approval of the request. (Exhibit R-17) The District Council adopted an Order of Remand on May 7, 2018, requiring a new hearing. (Exhibit R-2(a)). The remand hearing was held on August 8, 2018.

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

(5) The records of the prior hearings are incorporated, and adopted by reference, herein.

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) 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, No. M-130, issued on November 23, 2015. (Exhibit 5) The permit expired on November 23, 2017, during the pendency of this Application.

(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)

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.

(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)

(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 July 2017.

(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) At the first hearing representatives from DPIE, Inspector Sonny Kamara and Inspector James Laws, testified that they 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 District Council's Order of Remand provided, in pertinent part, as follows:

The application is remanded to the Examiner to afford the Applicant, Ali I. Tangoren, an opportunity to retain legal counsel to assist him with the governing law and evidence in support of his application. If the Applicant, Ali I. Tangoren is unable to retain legal counsel, this remand will afford him another opportunity to present evidence in support of his application.

On remand, Applicant ... shall present a complete set of photographs and floor plans of the subject site/property. ZHE Decision, pp, 1-4....

On remand, Applicant ... shall present copies of invoices, receipts, and other documents concerning financing and ownership of the subject site/property. ZHE Decision, pp. 1-4....

On remand, applicant ... shall produce evidence required by Zoning Ordinance [S]ection 27-258, Validation of permit issued in error, that a)

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

no fraud or misrepresentation had been practiced in obtaining the permit, b) no appeal or controversy regarding the issuance of the subject permit was pending before any administrative agency at the time of the permit's issuance, c) the applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit, d) the application meets the criteria of Zoning Ordinance Section 27-244, and e) the validation will not be against the public interest....

(Exhibit R-2(a))

(9) At the remand hearing Mr. Tangoren appeared without Counsel, first stating that he had a lawyer but the lawyer was not available, and then recanting, noting that the lawyers he spoke with were too expensive. (August 8, 2018 T. 5-10)

(10) Mr. Tangoren submitted photos to show certain repairs to the building in recent months. (Exhibits R-14(a)-(f)) He did not submit floor plans or any additional invoices for funds expended in reliance on the permit, as requested by the District Council, despite being given additional time to present these items. (August 8, 2018 T.74-76)

(11) Officer Raymond Musse of the Prince George's County Police Department, testified about the number of police calls requesting dispatch to, or near, the subject property since 2016. He also produced a copy of the Public Safety Communications Calls for Service report generated whenever the County Police are asked to respond. (Exhibit R-11) Officer Musse testified that all of the calls for service "either... happened in the building or outside the building... [and] whoever called 9-1-1 used the building as the address." (August 8, 2018 T.13) There were 90 calls for service, but officer Musse admitted there is not much to be assumed from the calls since many were cancelled before an officer arrived on the scene, many occurred outside of the subject apartment building and may have had nothing to do with its residents, and without any actual police incident reports it is difficult to ascertain what actually occurred. (August 8, 2018 T. 13-18)

(12) Lieutenant Colonel Roccapiore of the Prince George's County Sheriff Department (the "Department") testified that the Department executed eviction writs for two units within the apartment building, pursuant to applicable law. There was a slight delay in doing so due to the inability to talk with Mr. Tangoren, as Landlord, within 60 days of the issuance of the writs (as required by State law). Nonetheless the tenants were ultimately evicted without incident. (Exhibits R-12(a) and (b) and R-13(a) and (b); August 8, 2018 T. 21-32)

(13) Inspector Tim Holden with the Department of Permitting, Inspections and Enforcement ("DPIE") testified that DPIE issued a violation notice because there is no use and occupancy permit for the subject property. (August 8, 2018, T. 38) After discussion Inspector Holden recognized that the Application was filed to rectify that violation. He and fellow Inspector Sergio Velasco noted that there were no other citations pending for the subject property. (August 8, 2018, T. 38-43)

(14) The Inspectors and the Applicant also noted that the trash dumpsters have been removed from the right-of-way (an issue at the prior hearing). (August 8, 2018, T. 42-47)

(15) The Takoma Branch Civic Association purportedly submitted an email in opposition to the request questioning whether the subject property is safe for habitation. This Examiner does not, and cannot, give much weight to the email since no one appeared at the hearing. Accordingly, the beliefs stated in the email were not subject to cross-examination so truth and veracity cannot be weighed. Moreover since the information was submitted via email there was no ability to ascertain whether the Association actually prepared and voted to approve and send the email.

(16) Ms. Victoria Edusel, Mr. Soryba Bangoug, and Mr. Ibrahim Kabie, tenants at the subject property, appeared in support of Applicant's request. Each discussed recent improvements to the site made by Applicant, including a new illuminated exit sign, a repaired shower stall, a ceiling repair, installation of a new fire alarm, new fire extinguishers within the dwellings, and painting of all units. (Exhibits R-14(a) – (f); August 8, 2018, T. 50-60)

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, as follows:

Sec. 27-258. - Validation of permit issued in error.

(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.

(b) **Application.**

(1) An application for the validation shall be filed with the Department of Permitting, Inspections, and Enforcement.

(2) The application form shall be provided by the Department of Permitting, Inspections, and Enforcement and shall contain the information which the Director of that Department deems is necessary to meet the provisions of this Section.

(3) Along with the application, the applicant shall submit the following:

(A) A statement listing the names and the business and residential addresses of all individuals having at least a five percent (5%) financial interest in the subject property;

(B) If any owner is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. The statement shall also list the current Board of Directors, their

business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors;

- (C) If the owner is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds);
- (4) For the purposes of (A), (B), and (C) above, the term "owner" shall include not only the owner of record, but also any contract purchaser.
- (c) **Transmittal.**
 - (1) The application and accompanying material shall be forwarded by the Department of Permitting, Inspections, and Enforcement to the Office of the Zoning Hearing Examiner.
- (d) **Zoning Hearing Examiner hearing procedures.**
 - (1) The Zoning Hearing Examiner shall conduct a public hearing on the matter in accordance with Part 3, Division 1, Subdivision 2 of this Subtitle.
 - (2) The Zoning Hearing Examiner shall review the application for conformance with subsection (g) of this Section.
- (e) **Notice of public hearing.**
 - (1) The Zoning Hearing Examiner shall designate a date for the public hearing and shall notify the applicant of the date.
 - (2) The Clerk of the Council (or the office of the Zoning Hearing Examiner) shall publish a notice of the hearing at least thirty (30) days prior to the hearing date, at least one (1) time in the County newspapers of record.
 - (3) The notice shall contain:
 - (A) The date, time, and place of the hearing;
 - (B) A description and location of the property; and
 - (C) A description of the nature of the request.
- (f) **District Council hearing (oral argument) procedures.**
 - (1) The District Council shall decide upon the application, in accordance with the procedures for oral argument and Council hearings contained in Part 3, Division 1, Subdivision 3 of this Subtitle.
- (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 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.

(2) As noted in Section 27-258, *supra*, the application must also be reviewed for compliance with Section 27-244 of the Zoning Ordinance. That Section provides as follows:

Sec. 27-244. - Certification.

(a) **In general.**

- (1) A nonconforming use may only continue if a use and occupancy permit identifying the use as nonconforming is issued after the Planning Board (or its authorized representative) or the District Council certifies that the use is nonconforming is not illegal (except as provided for in Section 27-246 and Subdivision 2 of this Division). Any person making use of or relying upon the certification that is violating or has violated any conditions thereof, or that the use for which the certification was granted is being, or has been exercised contrary to the terms or conditions of such approval shall be grounds for revocation proceedings in accordance with this Code.

(b) **Application for use and occupancy permit.**

- (1) The applicant shall file for a use and occupancy permit in accordance with Division 7 of this Part.
- (2) Along with the application and accompanying plans, the applicant shall provide the following:
 - (A) Documentary evidence, such as tax records, business records, public utility installation or payment records, and sworn affidavits, showing the commencing date and continuous existence of the nonconforming use;
 - (B) Evidence that the nonconforming use has not ceased to operate for more than one hundred eighty (180) consecutive calendar days between the time the use became nonconforming and the date when the application is submitted, or that conditions of nonoperation for more than one hundred eighty (180) consecutive calendar days were beyond the applicant's and/or owner's control, were for the purpose of correcting Code violations, or were due to the seasonal nature of the use;
 - (C) Specific data showing:
 - (i) The exact nature, size, and location of the building, structure, and use;
 - (ii) A legal description of the property; and
 - (iii) The precise location and limits of the use on the property and within any building it occupies;
 - (D) A copy of a valid use and occupancy permit issued for the use prior to the date upon which it became a nonconforming use, if the applicant possesses one.
 - (E) In the case of outdoor advertising signs, the requirements of Section 27-244(b)(2)(B) are not applicable. Documentary evidence, including, but not limited to deeds, tax records, business records, approved plats or development plans, permits, public utility installation or payment records, photographs, and sworn affidavits, showing that the

outdoor advertising sign was constructed prior to and has operated continuously since January 1, 2002.

(c) **Notice.**

- (1) Notice of the proposed application shall be provided by the applicant in accordance with Section 27-125.01 of this Subtitle.
- (2) The following notice provisions shall not apply to uses that, with the exception of parking in accordance with Section 27-549, occur solely within an enclosed building.
- (3) The Planning Board shall post the property with a durable sign(s) within ten (10) days of acceptance of the application and accompanying documentation. The signs(s) shall provide notice of the application; the nature of the nonconforming use for which the permit is sought; a date, at least twenty (20) days after posting, by which written comments and/or supporting documentary evidence relating to the commencing date and continuity of such use, and/or a request for public hearing from a party of interest will be received; and instructions for obtaining additional information. Requirements regarding posting fees, the number, and the location of signs shall conform to the requirements set forth in Subsection (f), below.

(d) **Administrative review.**

- (1) Except for outdoor advertising signs, if a copy of a valid use and occupancy permit is submitted with the application, where applicable a request is not submitted for the Planning Board to conduct a public hearing, and, based on the documentary evidence presented, the Planning Board's authorized representative is satisfied as to the commencing date and continuity of the nonconforming use, the representative shall recommend certification of the use as nonconforming for the purpose of issuing a new use and occupancy permit identifying the use as nonconforming, upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property other than failure to have a use and occupancy permit. This recommendation shall not be made prior to the specified date on which written comments and/or requests for public hearing are accepted.
- (2) For outdoor advertising signs, if satisfactory documentary evidence described in Section 27-244(b)(2)(E) is received, the Planning Board's authorized representative shall recommend certification of the use as nonconforming for the purpose of issuing applicable permits and certifying the use as nonconforming. This recommendation shall not be made prior to the specified date on which written comments and/or requests for public hearing are accepted.
- (3) Following a recommendation of certification of the use as nonconforming, the Planning Board's authorized representative shall notify the District Council of the recommendation. Electronic notice of the recommendation for certification shall also be made by the Planning Board's authorized representative not later than seven (7) calendar days after the date of the recommendation. The Planning Director shall also publish the development activity report on the Planning Department's website.
- (4) If the District Council does not elect to review the recommendation within thirty (30) days of receipt of the recommendation as authorized by Subsection (e), below, the representative shall certify the use as nonconforming.
- (5) Subsections (3) and (4), above, and Subsection (e), below, shall not apply to uses that, with the exception of parking in accordance with Section 27-549, occur solely within an enclosed building.

(e) **District Council review.**

- (1) The District Council may, on its own motion, vote to review the Planning Board representative's recommendation, for the purpose of determining whether the use should be certified as nonconforming, within thirty (30) days of receipt of the recommendation.
 - (2) If the District Council decides to review the proposed certification, the Clerk of the Council shall notify the Planning Board of the Council's decision. Within seven (7) calendar days after receiving this notice, the Planning Board shall transmit to the Council all materials submitted to it in connection with the application.
 - (3) The Zoning Hearing Examiner shall conduct a public hearing on the application. The Zoning Hearing Examiner shall make the same findings required for Administrative review or approval by Planning Board required in this Section, as well as any other applicable prescriptions regulating the proposed use specified within any other applicable Subtitle of this Code.
 - (4) The Zoning Hearing Examiner shall file a written recommendation with the District Council within thirty (30) days after the close of the hearing record.
 - (5) Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council.
 - (6) Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.
 - (7) The District Council shall affirm the certification only if it finds that a nonconforming use exists and has continuously operated, and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.
 - (8) The District Council shall make its decision within forty-five (45) days from the filing of the Zoning Hearing Examiner's recommendation. Failure of the Council to take action within this time shall constitute a decision to certify the use.
- (f) **Planning Board review.**
- (1) Required hearing.
 - (A) If a copy of a valid use and occupancy permit is not submitted with the application, if the documentary evidence submitted is not satisfactory to the Planning Board's authorized representative to prove the commencing date or continuity of the use, or if a public hearing has been requested by any party of interest challenging the commencing date and/or continuity of the use, the Planning Board shall conduct a public hearing on the application for the purpose of determining whether the use should be certified as nonconforming.
 - (2) Application for certification.
 - (A) Whenever the Planning Board will hold a hearing on a certification of the use as nonconforming, the applicant shall complete the appropriate form provided by the Planning Board.
 - (3) At least seven (7) calendar days prior to the public hearing, the Planning Board shall send written notice of the date, time, and place of the hearing to the applicant and to all persons of record.
 - (4) Planning Board action.

- (A) The Planning Board may decide to either grant or deny certification of the use as nonconforming. If it decides to certify that a nonconforming use actually exists and has continuously operated and upon finding, within the administrative record for the application, that the use to be certified as nonconforming has no outstanding Code violations with the Department of Permitting, Inspections, and Enforcement regarding the property, other than failure to have a use and occupancy permit.
 - (B) The recommendation of the Planning Board shall be in the form of a resolution adopted at a regularly scheduled public meeting. The resolution shall set forth findings of fact and conclusions of law in support of the Planning Board's recommendation.
 - (C) The Planning Board shall send a copy of the resolution to all persons of record.
- (5) District Council election to review; Appeal of Planning Board's recommendation.
- (A) The recommendation of the Planning Board may be appealed by any person of record to the District Council by filing an appeal with the Clerk of the Council. In addition, and notwithstanding any appeal of the Planning Board's recommendation filed by a person of record, the District Council may, on its own motion, vote to review the Planning Board's recommendation for the purpose of making a final decision as to whether the use should be certified as nonconforming.
 - (B) The appeal shall be filed, or District Council vote to review the Planning Board recommendation shall occur, within thirty (30) calendar days after the resolution of the Planning Board was mailed. If no appeal is filed, and the District Council does not elect to review the recommendation of Planning Board within thirty (30) calendar days after the resolution of the Planning Board is mailed, the Planning Board's recommendation shall become the final decision as to the application to certify the use as nonconforming.
 - (C) Before the District Council makes a decision on the application, it shall hold a public hearing.
 - (D) The Council may decide to affirm, reverse, or modify the recommendation of the Planning Board. The decision of the Council shall be based on the record made before the Planning Board. No new evidence shall be entered into the record of the case unless it is remanded to the Planning Board and a rehearing is ordered.
- (g) **Applicability.**
- (1) This Section shall not apply to nonconforming buildings or structures occupied by conforming uses. (See Section 27-243.03.)

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) Mr. Tangoren has not submitted all additional information requested by the District Council in its Order of Remand, nor has he discussed the applicability of Section 27-244 to this request. Accordingly, it is difficult to discern how much has been expended in reliance on the permit issued in error – although clearly some amount has been spent. (Section 27-258 (g)(1)(C))

(5) I cannot find that the validation would not be against the public interest given Applicant's refusal to address the District Council's concerns by submitting all requested information in the Order of Remand. It might also be of assistance to the District Council in deciding this request to allow testimony from the Tacoma Branch Civic Association if representative(s) of that organization choose to appear and testify. (Section 27-258 (g)(1)(D))

RECOMMENDATION

It is recommended that the District Council remand the Application to the Zoning Hearing Examiner to allow the Applicant one last opportunity to submit floor plans, invoices for expenditures made in reliance on the permit, and testimony as to compliance with all applicable provisions of the Zoning Ordinance. Any person of record wishing to testify should also be provided the opportunity to do so.