

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

ERR 229

DECISION

Application:	Validation of Use and Occupancy Permits 6353-U and 6354-U
Applicant:	Ying & Gina Yee
Opposition:	None
Hearing Date:	March 12, 2014
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-229 is a request for validation of Prince George's County Use and Occupancy Permit 6353-U issued in error on March 11, 1963, for a three unit attached apartment building on approximately 9,068 sq. ft. of land, in the M-U-I (Mixed Use – Infill) Zone and in the College Park Development District Overlay Zone, also identified as 4227 Guilford Drive, College Park, Maryland. (Exhibit 5(a))
- (2) ERR-229 is also a request for validation of Prince George's County Use and Occupancy Permit 6554-U issued in error on March 11, 1963, for a three unit attached apartment building on approximately 8,766 sq. ft. of land, in the M-U-I Zone and in the College Park Development District Overlay Zone, also identified as 4229 Guilford Drive, College Park, Maryland. (Exhibit 5(b))

FINDINGS OF FACT

- (1) On March 3, 1963, Prince George's County issued Use and Occupancy Permits 6353-U and 6354-U respectively for the subject properties. Each property is improved with a two story detached brick structure which has a three (3) bedroom unit in the basement and a two (2) bedroom unit on both the first and second floors (Exhibits 3 and 4)
- (2) In 1963 the subject properties were in the R-18 (Multi-Family Medium Density Residential) Zone and were in compliance with the density requirements of the R-18 Zone.
- (3) In 1963 the Zoning Ordinance required that one parking space be provided for each dwelling unit and thus three spaces were required, however, due to lot constraints only two parking spaces were provided for each property. (Exhibits 6(a) and (b))

- (4) With the adoption of the Central US 1 Corridor Sector Plan and Sectional Map Amendment in 2010 the subject properties were placed in the M-U-I Zone. The maximum density for the M-U-I Zone is twelve (12) dwelling units per acre and the density of the subject properties is 14.9 dwelling units per acre, respectively.
- (5) A maximum of 40% of the dwelling units in the M-U-I Zone may be two (2) bedroom units; each of the subject properties is developed with 66.6% two (2) bedroom units.
- (6) The Applicants have expended monies in purchasing (2007) and maintaining the subject structures and the six (6) apartment units as rental units.
- (7) The Applicant testified that to his knowledge no fraud or misrepresentation was practiced in obtaining Use and Occupancy Permits 6353-U and 6354-U and that no controversy regarding their issuance is pending before any legal body.
- (8) The subject properties were each developed with three unit apartment buildings in 1963 and have operated continuously in this capacity since that time, blending in with the surrounding properties and not altering the character of the neighborhood. Approval under these circumstances would not be against the public interest.

LAW APPLICABLE

- (1) A Use and Occupancy Permit or 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 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 filed in accordance with §27-258 of the Zoning Ordinance. Each of the two subject properties has been licensed by the County for three (3) dwelling units since March 11, 1963. (Exhibit 3) No fraud or misrepresentation was practiced in obtaining the Permits. There is no evidence that there was any appeal or controversy regarding the issuance of Use and Occupancy Permits 6353-U and 6354-U. The Applicants have acted in good faith, expending funds or incurring obligations in reliance on the Permits.

RECOMMENDATION

It is recommended that the District Council validate Use and Occupancy Permits 6353-U and 6354-U. The two three (3) unit apartment buildings shall be declared to be Certified Non-Conforming Uses.