

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

**ERR-234**

**DECISION**

Application:	Validation of Multi-Family Rental License No.3933/(Project ID # M-798)
Applicants:	Temnit and Fitwi Tekeste
Opposition:	None
Hearing Date:	May 21, 2014
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

**NATURE OF PROCEEDINGS**

- (1) ERR-234 is a request for the Validation of Multi-Family Rental License No. 3933 (Project ID# M-798) issued in error on May 25, 1990, to operate a three unit multifamily dwelling located at 6112 41<sup>st</sup> Avenue, in Hyattsville, Maryland. (Exhibit 2)
- (2) The subject property consists of approximately 0.128 acre (5, 585 square feet) of land, in the R-18 (Multifamily Medium Density Residential) Zone.
- (3) No one appeared in opposition to the request for validation.

**FINDINGS OF FACT**

- (1) The subject property is improved with a two-story and basement brick structure that has been divided into three (3) dwelling units – two (2) that are side by side and one in the basement. Applicants submitted a picture of the structure, a floor plan, and a Site Plan (location survey). (Exhibits 13, 15, 16(a) and 19)
- (2) Applicants testified that the property was advertised as a three unit building. (Exhibit 12 and 13) Temnit Tekeste purchased the property at a public auction in August 2013. At time of purchase the dwelling was divided into three units.
- (3) Applicants applied for a Use and Occupancy Permit and a new apartment license. At that time Applicants learned that no more than two dwelling units were permitted under applicable provisions of the Zoning Ordinance in effect when the building was constructed and at the present time, and their requests were put on hold.
- (4) Staff with the Maryland- National Capital Park and Planning Commission reviewed the application for the new permit and offered the following comment:

This permit application is for a three unit apartment in the R-35 Zone. This property was rezoned from Residential A to Residential B on 2/22/38. The structure was constructed in 1944 and was originally built as a two family dwelling. In 1949 the property was rezoned to R-35. According to prior issued rental licenses the structure is 3 dwelling units. Residential B zoning and R-35 Zoning only allowed for two family dwelling units. Permit evidence of the third unit has not been legally established. The property is now located in the Traditional Residential Neighborhood Character Area within the Development District Overlay Zone of the Gateway Arts District as of November 30, 2004 which also prohibits a three family dwelling. Prior apartment licenses support the two family dwelling units (and the third unit). Per the Gateway Arts District Legally Existing Development – provides that all buildings, structures and uses that were lawful or could be certified as a legal nonconforming use on the date of the SMA approval are exempt from the development district standards and from site plan review and are not nonconforming. If expansion of the use on the existing site is proposed, a site plan would be required and all expansion would need to conform in order to meet the development standards. Since it appears that this site has not legally been permitted as a three family dwelling and prior apartment rental licenses have been issued in error and the owner must pursue “Validation of rental license issued in error”....

(Exhibit 9, Emphasis in Original)

(5) Staff then advised the Department of Permits, Inspections and Enforcement (“DPIE”) that Applicants would be requesting validation of a permit issued in error by Memorandum dated February 4, 2014:

On May 25, 1988, Apartment License #3933 was issued by the Department of Environmental Resources Property Standards Division to operate a 3 unit apartment building at 6112 41<sup>st</sup> Avenue. At the time of construction in 1944, the property was zoned Residential “B” which did not permit 3 unit multi-family dwellings. In 1949, the property was placed in the R-35 which did not permit 3 unit multi-family dwellings. The property is currently located in the Gateway Arts District Traditional Residential Neighborhood Character Area which also does not permit 3 unit multi-family dwellings. A use and occupancy permit has not been issued to the subject site for a 3 unit multi-family.

Based on the above information, Apartment License #3933 was issued in error by the Department of Permitting, Inspection and Enforcement to operate a 3 unit multi-family dwelling apartment. Your office will be contacted by Temnit Tekeste to commence “Validation of Apartment License Issued in Error” as outlined in section 27-258 of the Prince George’s county Zoning Ordinance.

(Exhibit 8)

(6) Applicants submitted copies of several multifamily rental licenses issued to the prior owner, from 1976 until 1990. (Exhibits 17(a) – (f)) Each license indicated there were three (3) units on site.

(7) They have, in total, Applicants expended in excess of \$281,000 to purchase the site. (Exhibit 14) It has since expended nearly \$ 150,000 for upkeep, such as electrical work, providing a gas line from the street, installation of drywall, and flooring. (Exhibit 21(b)) All sums were spent in reliance on the apartment license issued in 1990.

(8) Mr. Tekeste and his daughter averred that no fraud or misrepresentation was practiced in obtaining the Multifamily Rental License and that no appeal or controversy was pending before any administrative body at the time of the permit's issuance. This approval is sought to validate a Multifamily Rental use that has existed on site for over 70 years. Applicants stated that the property is surrounded by similar two (2) and three (3) unit dwellings, and submitted pictures of the subject property and other dwellings on the block. (Exhibits 16 (a)-(j)) The subject property clearly blends in with the adjoining properties, and the property is well maintained. Nothing in the record indicates that the use has had any adverse impact upon the neighboring properties, or in any way alters the character of the neighborhood. Approval under these circumstances would not be against the public interest.

### **LAW APPLICABLE**

(1) Apartment License No. 3933 (M-798) and the accompanying Site Plan may be validated as issued in error in accordance with Section 27-258 of the County's Zoning Ordinance. The portions relevant to the instant request are Sections 27-258 (a), (g) and (h), which provide 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.

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(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 non-conforming use.**

- (1) Any building, structure, or use for which a permit issued in error has been validated by the Council shall be deemed a non-conforming building or structure, or a certified non-conforming use, unless

otherwise specified by the Council when it validates the permit. The non-conforming building or structure, or certified non-conforming use, shall be subject to all of the provisions of Division 6 of this Part.

### **CONCLUSIONS OF LAW**

The law expressly allows the Applicants to seek validation of the Apartment License if it was validly issued. (Prince George's County Code, Section 27-258(a)) The prior owner was granted the license to allow it to rent three (3) apartment units at the subject property. (Exhibit 2) Accordingly, the permit at issue was validly issued. There is no evidence to support a finding that fraud or misrepresentation was practiced in obtaining the apartment license. (Section 27-258(g)(1)(A)) The record indicates that there was no known appeal or controversy regarding the issuance of the license at the time of issuance. (Section 27-258(g) (1) (B)) The Applicants acted in good faith in seeking the license and expended considerable funds (in excess of \$400,000 since its purchase ) in reliance on said license. (Section 27-258 (g)(1)(C)) The instant request will merely validate a use that has existed at the site for over 70 years. The validation of the license will result in no discernable difference in the use of the subject property and, therefore, will not be against the public interest. (Section 27-258 (g) (1) (D))

### **RECOMMENDATION**

It is recommended that the District Council validate Multi-Family Rental License No. No.3933/(Project ID #M-798), in accordance with Applicants Site Plan(location survey). (Exhibit 19) If approved, the District Council should declare the apartment with three (3) dwelling units to be a Certified Non-Conforming Use.