

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

ERR-237

DECISION

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| Application: | Validation of Use and Occupancy Permit 31769-2012-00 |
| Applicant: | Deemiracle Auto Group, LLC |
| Opposition: | None |
| Hearing Date: | July 30, 2014 |
| Hearing Examiner: | Joyce B. Nichols |
| Disposition: | Approval |

NATURE OF PROCEEDINGS

- (1) ERR-237 is a request for validation of Prince George's County Use and Occupancy Permit 31769-2012-00 issued in error on October 16, 2012, for "Auto & Other Motor Veh Ret, Auto Accessory Install Serv", on approximately 0.138 acre of land, located in the C-M (Commercial Miscellaneous) Zone, also identified as 900 Larchmont Avenue, Capitol Heights, Maryland. (Exhibit 5)
- (2) No one appeared in opposition and the record was closed on July 30, 2014.

FINDINGS OF FACT

- (1) The Applicant applied for a Use and Occupancy Permit to operate a used car sales lot with auto detailing and auto accessory installation on the subject property. Use and Occupancy Permit 31769-2012-00 was issued pursuant to this application on October 16, 2012.
- (2) CB-87-2000 required vehicle sales lots to be located on a tract of land containing a minimum of 25,000 sq. ft. The subject property contains approximately 6,000 sq. ft. of land. (ExhibitS 6, 8 and 9)
- (3) The Maryland National Capital Park and Planning Commission (MNCP&PC) employee who reviewed and recommended the permit for approval has indicated that the error in issuing the permit was solely the fault of MNCP&PC and no fault is bourne by the Applicant. (Exhibit 7)
- (4) The Applicant has expended monies in leasing the subject property in 2012 (Exhibit 12), for the express purpose of utilizing the property for auto sales/accessory installation. The Applicant has

additionally expended funds in reliance on the Use and Occupancy Permit, including but not limited to, utility bills, and purchases of vehicle and vehicle parts. (Exhibits 12(d)-(h))

(5) The Applicant testified that no fraud or misrepresentation was practiced in obtaining Use and Occupancy Permit 31769-2012-00 and that no controversy regarding its issuance is pending before any legal body.

(6) The subject property was developed and utilized for vehicle sales and Accessory installation since October, 2012 and has 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 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.

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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 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.

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CONCLUSIONS OF LAW

(1) The instant Application is filed in accordance with §27-258 of the Zoning Ordinance. Deemiracle Auto Group has operated a vehicle sales lot with accessory installation services pursuant to Use and Occupancy Permit 31769-2012-00 since October, 2012. No fraud or misrepresentation was practiced in obtaining the Permit. The MNCP&PC admits that it is solely responsible for the error which lead to the issuance of this Permit. (Exhibit 7) The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the Permit. There is no evidence that there was any appeal or controversy regarding the issuance of the Use and Occupancy Permit. The validation will not be against the public interest. §27-258

RECOMMENDATION

It is recommended that the District Council validate Use and Occupancy Permit 31769-2012-00. The vehicle sales lot with accessory installation services on the subject property shall be declared to be a Certified Non-Conforming Use.