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

ERR-241

DECISION

Application:	Validation of Multi-Family Rental License M-0105 Issued in Error
Applicant:	Hampshire View Apartments II, LLC
Opposition:	None
Hearing Date:	December 15, 2014
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

(1) ERR-241 is a request for validation of Prince George's County Multi-Family Rental License No. M-0105. The license was issued in error on August 19, 2011(Exhibit 13(g)) for one apartment building containing 31 dwelling units, on approximately 4.98 acres located in the R-18 (Multi-Family Medium Density Residential) Zone, also identified as 951-957 East West Highway, Takoma Park, Maryland.

(2) No one appeared in opposition at the hearing held by this Examiner. The record was left open to allow Applicant to submit a floor plan for the apartments. That item was submitted on December 23, 2014 and the record was closed at that time. (Exhibits 39(a)-(e))

FINDINGS OF FACT

(1) The existing multifamily structure was constructed in 1948. (Exhibit 5) The Apartment building includes six (6) one-bedroom units, and twenty-five (25) two-bedroom units.

(2) The Applicant noted that the apartment has been continually occupied from 1956 to the present. Due to this gap in time between construction and 1956, Applicant is unable to seek certification of a nonconforming use. (Discussed below)

(3) Applicant purchased the subject property in July, 2009. (Exhibit 8)

(4) Applicant was advised in October 2011 that it was required to obtain a new Use and Occupancy Permit once it purchased the property. Zoning violation notices to that effect were issued. (Exhibits 15-17)

(5) Applicant subsequently sought approval of the requisite Use and Occupancy permit. The Permit Review Section of the Maryland-National Capital Park and Planning Commission provided the following synopsis in its review of the application:

> This permit is for [an] existing apartment building in the R-18 Zone that was constructed in 1948 with 31 dwelling units of which 6 units are one bedroom and 25 units are two bedrooms. Two prior permits were placed on hold for the same property, 2189-2002-U and 29262-2011-U, for certification of nonconforming use…. Certification of nonconforming use is required because the apartments exceed the current maximum density of the R-18 Zone and it exceeds bedroom percentages. The overall density is 30.8 units per acre which exceeds current maximum density of the R-18 Zone which is 12 units per acre. The apartments exceed bedroom percentages by providing 80.6% two bedroom units and only a maximum of 50% two bedroom units are permitted. The site plan that was submitted with the current permit application demonstrates that the apartments were constructed in accordance with the regulations in effect at the time of construction in 1948. At this time the property was zoned Residential "C" which required a minimum of 625 square feet of net lot area per dwelling unit which would have permitted the 31 dwelling units. The property was placed in the R-18 Zone on November 29, 1949. At this time the density requirement changed to 1,800 square feet of net lot area per dwelling, thus only allowing a maximum of 24 dwelling units and therefore rendering the apartments nonconforming. The apartments became nonconforming to bedroom percentage when this requirement was adopted on October 1, 1968. I called Tom Haller to discuss the permit comments and to inquire as to why the Site Plan Notes indicate the Application is for Validation of Permit Issued in Error. He explained that since he was not able to provide all of the required documentation of continuous operation back to 1949, he will be pursuing Validation of Apartment Licenses Issued in Error. The Site Plan Notes should be corrected accordingly. Per PSD, there is no prior use and occupancy permit for the apartments. I emailed the comments to Tom Haller.

(Exhibit 5)

(6) The subject property has obtained Multifamily Rental Licenses from Prince George's County from 1973 until the present. (Exhibits 12(a)-(n) and 13(a)-(g))

(7) The Applicant assumed the over Two Million Dollar loan of the prior owner in purchasing the subject property in 2009; $337,000 in capital improvements (including new electrical service, renovation of 8 units, and a new sewer line); and an additional $164,000 for maintaining the subject structure and operating the rental units. (Exhibits 8, 10, 11, and 37))

(8) Kurt Denchfield, (managing member of the LLC) testified, on behalf of Applicant

that to his knowledge no fraud or misrepresentation was practiced in obtaining Multi-Family Rental License No. M-0105 and that no controversy regarding its issuance is pending before any legal body.

(9) Applicant provided an aerial of the property and its surroundings as well as photos of the apartment's facade. (Exhibits 31-36) The subject property is surrounded by a gas station, and other commercial uses, a few single family dwellings and other multifamily dwellings. (Exhibit 31) The subject property was developed with a 31 unit apartment building in 1948 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 Section 27-258 of the Zoning Ordinance, which provides, in pertinent part, 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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> * * * * * *
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> (g) **Criteria for approval**.
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> (1) The District Council shall only approve the application if:
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> (A) No fraud or misrepresentation had been practiced in obtaining the permit;
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> (B) If, at the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;
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> (C) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and
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> (D) The validation will not be against the public interest.
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> (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 in accordance with Section 27-258 of the Zoning Ordinance. The Hampshire View Apartments have been licensed by Prince George's County for 31 dwelling units since1973 pursuant to Multi-Family Rental License No. M-0105. The Applicant has applied for, but is unable to obtain, a valid Use and Occupancy Permit for the subject property. (Exhibit 5) No fraud or misrepresentation was practiced in obtaining the License. The Applicant has acted in good faith, expending funds or incurring obligations in reliance on the License. There is no evidence that there was any appeal or controversy regarding the issuance of the Multi-Family Rental License. The validation will not be against the public interest as the instant Application merely validates a use that has existed on the subject property for over six decades.

RECOMMENDATION

It is recommended that the District Council validate Multi-Family Rental License No. M-0105. The 31 dwelling unit apartment building on the subject property shall be declared to be a Certified Non-Conforming Use, in accordance with the Site Plan and Floor Plan. (Exhibits 23 and 39(b)-(e))