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

ERR-242

DECISION

Application:	Validation of Multifamily Rental License M-0164 Issued in Error
Applicant:	South Hill Apartments, LLC
Opposition:	None
Hearing Date:	January 21, 2015
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

NATURE OF PROCEEDINGS

(1) ERR-242 is a request for validation of Prince George's County Multifamily Rental License No. M-0164. The license was issued in error on October 1, 2014 for a 69-unit multifamily apartment building on approximately 1.32 acres located in the R-T (Townhouse) Zone, also identified as 4105 Southern Avenue, Capitol Heights, Maryland.

(2) No one appeared in opposition at the hearing held by this Examiner.

FINDINGS OF FACT

(1) South Hill Apartments, LLC is a subsidiary of Southern Management Corporation .

(2) The existing multifamily apartment building was constructed between 1962-1964. (Exhibit 2) The original Use and Occupancy permit was for one building but did not mention the number of units. (Exhibit 8(t))

(3) There are 66 one-bedroom units (which includes 7 efficiencies), and 3 two-bedroom units. (Exhibit 18)

(4) Applicant provided photographs of the property. (Exhibits 15(a)-(e))

(5) The Applicant noted that the apartment has been continually occupied from the time of its construction to the present.

(6) Applicant purchased the subject property in 2006 for approximately 3.6 Million

Dollars. (Exhibit 14) The apartment building has been licensed since 1971. However, it was not originally licensed for 69 units. In 1971 the Multifamily Rental License was for 67 units and in 1972 it was for 68 units. It has been licensed for 69 units since 1984. (Exhibits 8(b)-(s))

(7) Multifamily Rental Housing License No. M-0164 was issued to Applicant South Hill, LLC Southern Management Corp. on October 1, 2012 and October 1, 2014 for 69 dwelling units. (Exhibits 8 (r) and (s)) Applicant seeks to certify the most recent license.

(8) Applicant became aware of the need for the instant Application upon its refinancing of the apartment complex, and when the Department of Permitting, Inspection, and Enforcement changed its policies to require all multifamily dwellings to apply for Use and Occupancy permits. .

(9) The Permit Review Section of the Maryland-National Capital Park and Planning Commission provided the following synopsis in its review of an application for a Use and Occupancy Permit 35140-2012-U (Exhibit 19):

> This permit is for an existing apartment project, South Hill Apartments, which has 69 dwelling units and constructed pursuant to building permit 4/24/64. The property was rezoned from the R-10 Zone to the R-T Zone on June 1, 2010, by the Subregion 4 Master Plan and Sectional Map Amendment. Multifamily dwellings are only permitted in the R-T Zone if they comply with footnote 88 which is:
>
> > Permitted only where the multifamily development is the subject of a condominium regime, the property is located in a Transit Development Overlay Zone, the property abuts the District of Columbia, and the development includes a mix of residential and commercial uses. A Detailed Site Plan shall be approved by the Planning Board in accordance with Part 3, Division 9 of the Zoning Ordinance…. (CB-82-2008)
>
> Since the property does not meet the requirements of this footnote the apartments are not permitted and must be certified as a nonconforming use. The unit mix must be provided to determine the date the apartments became nonconforming….
>
> Per PSD a use and occupancy permit was issued on 1-2-65 for 69 units. At the time of permit approval/construction in 1964 a maximum of 48 units per acre was allowed in the R-10 Zone. Based on 1.3197 acres a maximum of 63 units would have been permitted however 69 exist (density is 52.67 du/acre). Therefore certification of nonconforming use cannot be pursued. The applicant must pursue Validation of Permit Issued in Error if the 69 units existed at the time the permit was issued. Otherwise Validation of Apartment License Issued in Error must be pursued….
>
> The apartments are not in [compliance] with the maximum density allowed in the R-10 Zone at the time of construction in 1964. The maximum density allowed was 48 dwelling units per acre and the site provides 52.3 units per acre. A maximum of 63 units would have been allowed. The site is also not in compliance with the minimum number of required parking spaces in 1964. Based on 1.25 spaces per dwelling unit a total of 86 parking spaces would have been required (140 spaces under current code requirements) and only 77 are provided. Permit 9189–U was issued on 1/2/65 for the apartments however no number of dwelling units were provided on the permit. However the 1970 apartment license and permit 3839 & 3840-97-CG approved for a telecommunication room and antenna both indicated 68 dwelling units. Therefore if the property

> has been issued multifamily license for 69 dwelling units, then the applicant must pursue Validation of Apartment Licenses Issued in Error….

(Exhibit 5)

(10) Applicant has expended over $627,000 on utilities, maintenance and repairs since its purchase of the subject property. (Exhibit 11)

(11) Applicant's witness, Jessica Alcocer, 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.

(12) The property appears to be well maintained. (Exhibits 15(a) – (e)) It is surrounded by a mausoleum, another apartment operated by Southern Maryland Management and single-family homes (across Southern Avenue and within the District of Columbia).

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**.
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> (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;
>
> (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

The instant Application is in accordance with Section 27-258 of the Zoning Ordinance. The South Hill Apartments have been licensed by Prince George's County for 69 dwelling units since 2012 pursuant to Multifamily Rental License No. M-0164. The Applicant has applied for, but is unable to obtain, a valid Use and Occupancy Permit for the subject property. The record reveals that no fraud or misrepresentation was practiced in obtaining the Multifamily Rental License. The Applicant has acted in good faith, expending considerable funds or incurring obligations in reliance on this License. There is no evidence that there was any appeal or controversy regarding the issuance of the Multifamily Rental License. Thus, the validation will not be against the public interest as the instant Application merely validates a use that has existed on the subject property since 1964.

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-0164 and declare it to be a Certified Non-Conforming Use, in accordance with the Site Plan and Floor Plan. (Exhibit 18)