

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

ERR-249

DECISION

Application: Validation of
Multi-Family Rental Housing License M-577

Opposition:	None	Applicant:	Candlewood Apartments/Trace Associates, Ltd
Hearing Dates:	July 15 and July 21, 2015		
Hearing Examiner:	Joyce B. Nichols		
Disposition:	Approval		

NATURE OF PROCEEDINGS

(1) ERR-249 is a request for validation of Prince George's County's Multi-Family Rental Housing License No. M-577, issued in error on January 6, 2015, (Exhibit 5(d)), for 12 apartment units, on approximately 21,526 square feet of land, located in the R-18 (Multi-Family Medium Density Residential) Zone, also identified as 5009 Quincy Street, Bladensburg, Maryland.

(2) No one appeared in opposition and at the close of the evidentiary hearing the record was kept open for several documents, upon receipt of which the record was closed August 18, 2015.

FINDINGS OF FACT

(1) Neither tax assessment data nor the Maryland National Capitol Parks and Planning Commission (M-NCPPC) apartment files disclosed the date of construction of the subject apartment building. (Exhibit 2)

(2) The subject property was placed in the R-18 Zone on April 14, 1961. (Exhibit 2)

(3) Candlewood Apartments exceed the maximum density of 12 dwelling units per acre in the R-18 Zone as it contains 24.29 dwelling units per acre. (Exhibit 2)

(4) The subject property is developed with one efficiency unit (8.33%) and 11 two bedroom units (91.67%). The R-18 Zone permits a maximum of 40% two bedroom units. (Bedroom percentages were adopted 10/1/68). (Exhibit 2)

(5) Prior to 1964 the minimum net lot area required was 1,800 square feet per dwelling unit. In 1964 the minimum net lot area required was increased to 2,000 square feet per dwelling unit thus permitting a maximum of 10 dwelling units on the subject property. (Exhibit 2)

(6) Permit 6176-U was issued on 12/13/62 for "Occ. Apt's Parking for 11 cars, storage, and laundry room." Property address maps as well as the 1973 and 1975 rental licenses showed the building as having 11 units. (Exhibit 2)

(7) The 1977 rental license (M-577) and all subsequent rental licenses to date are for 12 apartment units. (Exhibits 2, 5(a)-(d))

(8) The Applicant has expended monies in purchasing the subject property in 1999, (Exhibit 11), and in maintaining the subject structure and operating the rental units. (Exhibits 14, 15, 16 (a) and (b), 17(a) and (b), 23, 24, 25, 26, 27, 28, and 29)

(9) The Applicant testified that to his knowledge no fraud or misrepresentation was practiced in obtaining Multi-Family Rental License No. M-577 and that no controversy regarding its issuance is pending before any legal body.

(10) The subject property was developed and operated as an eleven unit apartment building since prior to 1962 and as twelve unit apartment building since prior to 1977. It has been operated continuously in this capacity since then, blending in with the surrounding properties and not altering the character of the neighborhood. (Exhibits 12(a)-(e))

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.

* * * * *

(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. The Candlewood Apartments have been licensed by Prince George's County for 12 units since at least 1977. (Exhibit 14) On August 15, 2015 the Applicant applied for Use and Occupancy Permit 1897-2015-U, but due to the nonconforming status of the subject property this Use and Occupancy Permit cannot be issued. No fraud or misrepresentation was practiced in obtaining Multi-Family Rental License M-577. The Applicant has acted in good faith, expending 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 Multi-Family Rental License. The validation will not be against public interest as the instant Application merely validates a use that has existed on the subject property for almost 40 years. §27-258

RECOMMENDATION

It is recommended that the District Council validate Multifamily Rental License No. M-577. The 12 dwelling unit apartment building on the subject property shall be declared to be a Certified Non-Conforming Use. The Site and Unit Location Plans are Exhibits 8 and 13(a)-(c).