

BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND
Sitting as the Board of Administrative Appeals

June 14, 2018

Petitioner: Hanover Gardens Associates LLC ("Hanover")
Appeal No.: AA-1688
Subject Property: Parcel A, Schrom Village Apartments, being 7232 Hanover Parkway, Greenbelt,
Prince George's County, Maryland
Counsel for Prince George's County Department of Permitting, Inspections and Enforcement
("DPIE"): Tara Jackson, Esq. Deputy County Attorney and Jourdan E. Brooks,
Associate County Attorney
Counsel for Petitioner: Michael S. Nagy, Rifken, Weiner, Livingston, Attorney at Law
Witnesses: Sonny Komara, DPIE Code Enforcement Inspector
Tim Holden, DPIE, Senior Inspector
Heard: June 21, 2017; Decided: July 26, 2017
Board Members Present and Voting: Bobbie S. Mack, Chairperson
Albert C. Scott, Vice Chairman
Anastasia T. Johnson, Member

RESOLUTION

This appeal was filed with the Board of Appeals for Prince George's County, Maryland, sitting as the Board of Administrative Appeals, from the determination of the Department of Permitting, Inspections and Enforcement, (DPIE), Enforcement Division, to issue a denial of the application to operate and occupy a rental dwelling on R-18 (Multifamily Medium Density Residential) zoned property known as The Hanover Apartments, located at Parcel A, Schrom Village Apartments, being 7232 Hanover Parkway, Greenbelt, Prince George's County, Maryland.

Evidence Presented

The following testimony and evidence were presented to the Board for its consideration:

1. The subject property contains 14.85 acres, is zoned R-18 (Multifamily Medium Density Residential) and is improved with 320 multifamily dwelling units.
2. On September 20, 2016, Rental License M-0530 was issued to Hanover Garden Associates, LLC, for 320 apartments located at 7232 Hanover Parkway, Greenbelt, MD with a fee of \$24,000.00 paid. The expiration date of the license is September 20, 2018.
3. On March 16, 2017, Hanover purchased the subject property (Handover Apartments) from Hanover Gardens Associates LLC.
4. Hanover applied for a license.¹
5. On April 13, 2017, DPIE issued a letter of denial of a rental housing license to Hanover stating its failure to submit the required documentation (annual fire inspection certificate and/or Use and Occupancy Permit) issued and failure to provide documentation of proof of current ownership.

¹ Sec. 13-182. (a) - License application; existing or new premises.

(a) The legal owner of record of each existing single-family rental facility or multifamily rental facility shall make written application to the Director for a license for such use, on a form to be supplied by the Director and containing such information as necessary to administer and enforce the provisions of, and to insure compliance with the provisions of, this Division and the Housing Code in its entirety.

6. On April 21, 2017, DPIE issued a letter to Hanover requiring a fee of \$24,000, in which it stated that the fee for six months or one-year license is the same charged for a two-year license. (“License”).

7. On April 26, 2017, Hanover applied for a Certificate of Occupancy (case #17302-2017-000).

8. On April 28, 2017, Handover submitted a Rental Housing License renewal application to DPIE. DPIE did not accept the application because it was without the application fee of \$24,000.00 (\$75.00 per dwelling unit (320 units)).²

9. Attorney Nagy contended that the full fee charge of \$24,00.00 to Petitioner constituted "double dipping" because the Rental Housing License fee for the subject property had already been paid through September 20, 2018 by the previous owner. He further contended that the Code is silent as to whether the fee paid may be prorated but believed that there is sufficient ambiguity in Section 13-185, Section 13-186(d) and Section 13-189 (b) and (c) to support his premise that an “appropriate fee” is warranted in this matter. He submitted that it is unfair and a windfall to the County to charge the full license fee to Hanover.

10. Handover requested that the Board find that since the fee (associated with the subject property) has been paid through September 20, 2018 by the prior owner, the appropriate rental housing fee for Hanover should be prorated to \$6,000.00.

11. Attorney Tara Jackson argued that the plain language in the Code should be applied in this matter.³ She specifically referred to Section 13-181 (a), Section 13-186, Section 13-186 (a) and Section 13-186 (b).

13. Ms. Jackson reiterated that the County did not accept Handover’s application because it was not accompanied with the appropriate fee.⁴ She stated as soon as Petitioner, the new owner, is willing to pay the fee, the County will accept the license.

14. Mr. Nagy did not disagree with the application of Section 13-186 as it relates to termination of the license occurs upon change of ownership and is not transferable. He contended, however, that Section 13-186 (d) prescribes that the term for a new license shall begin on the date the application with an “appropriate fee” received by the Director. He explained that the purpose of the license fee is to be able to conduct the number of inspections required for the health safety and welfare of the residents of the multi-family units and the citizens of Prince George's County and those services were already paid for (by the prior owner) for the period through September 20, 2018.

Findings of the Board

After hearing all the testimony and reviewing the evidence presented, the Board finds as follows:

1. On April 13, 2017, the Denial of the Application to operate and occupy a rental dwelling was issued to Handover by DPIE for property known as The Hanover Apartments.

² . On May 12, 2017 the Office of Law apparently conveyed to Petitioner that DPIE was unwilling to grant an exception for full payment of the fees pursuant to Section 13-186 which states full fee are required when a rental license terminates on change of ownership (and as is recited in the license). Exh.

³ The County contended that in looking at the plain language of the statute it was the legislative intent for every new owner of a multltfamily rental facility apply for a new license and pay for the license and inspection fees and there was no intent for the licensure fee to apply to any subsequent owners. *Nesbit v. Gov. t Ins.*, 382 Md. 65, 73(2254) Citing, *Chesapeake and Potomac Telephone Co. of Maryland v. Director of Finance for Mayor and City Council of Baltimore*, 343 Md. 567, 683v (1996).

⁴ Sec. 13-189. - Schedule of fees; refunds; review of fees. (*In pertinent part*)

(a) At the time of application for the initial license or for license renewal for a multifamily rental facility for each dwelling unit, and a single-family rental facility for each dwelling unit shall be collected per the fee prescribed in the Table of Fees. The license shall be for a two (2) year period.

(1) The above license and inspection fees shall be tendered with the application for the first issuance of use and thereafter on or before the date for license renewal.

(b) Except as provided for the transfer of license, no refunds of license and inspection fees shall be made to those discontinuing operation or who sell, transfer, give away, or otherwise dispose of a licensed building to another person

- 2. Sec. 13-182. - License application; existing or new premises.
 - (a) The legal owner of record of each existing single-family rental facility or multifamily rental facility shall make written application to the Director for a license for such use, on a form to be supplied by the Director and containing such information as necessary to administer and enforce the provisions of, and to insure compliance with the provisions of, this Division and the Housing Code in its entirety.
- 3. Sec. 13-186 (d). - Termination of license on change of ownership; procedures for a new license; penalties for failure to apply; term of license.
 - (d) "The term for a new license shall begin on the date the application with appropriate fee was received by the Director. "
- 4. Sec. 13-189. - Schedule of fees; refunds; review of fees.
 - (a) At the time of application for the initial license or for license renewal for a multifamily rental facility for each dwelling unit shall be collected per the fee prescribed in the Table of Fees. The license shall be for a two (2) year period.
 - (1) The above license and inspection fees shall be tendered with the application for the first issuance of a license and thereafter on or before the date for license renewal.
- 5. The Board sees no reason to disturb the decision made by DPIE in this matter. Sec. 13-186 (d) clearly prescribes that upon change of ownership the term for a new license shall begin on the date of the application with an appropriate fee was received by the Director. Petitioner purchased the property as new owners and as such is subject to the full fee requirements of Section 13-186 (d). No provision is provided for a pro-rated fee.
- 6. The Board also notes, however, that Section 13-189(c) states that fees are subject to review and revision periodically as experience dictates to ensure that the fees are equitable and in line with costs of administration.

BE IT THEREFORE RESOLVED, by majority vote, Mr. Al Scott abstaining, that the determination of the Department of Permitting, Inspections and Enforcement, to deny Rental Housing License to Petitioner be and is hereby AFFIRMED.

BOARD OF ADMINISTRATIVE APPEALS

By: _____

Bobbie S. Mack, Chairperson

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board’s proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George’s County.