

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

**ERR-233**

**DECISION**

Application:	Validation of Multi-Family Rental License No.7034/(M-384)
Applicant:	Capital Crossing Apartments, LLC
Opposition:	None
Hearing Date:	May 6, 2014
Hearing Examiner:	Maurene Epps McNeil
Recommendation:	Approval

**NATURE OF PROCEEDINGS**

- (1) ERR-233 is a request for the Validation of Use and Occupancy Permit No. 7034 (M-384) issued in error on April 30, 1996, to operate a 31-unit multifamily apartment complex located at 3801, 3803, 3901, 3903, 3905, 3907, 3911, 3913, 3920, 3922, 3924, 3926, 3928, 3930, 3932, 3934, 3936, 3938, 3940, 3942, 3944, 3946, 3948, 3950 Southern Avenue and Suitland Road in Suitland, Maryland. (Exhibit 3)
- (2) The subject property consists of approximately 134.67 acres of land, in the R-10 (Multi-Family High Density Residential) Zone.
- (3) No one appeared in opposition to the request for validation.

**FINDINGS OF FACT**

- (1) The subject property is 134.67 acres in size, and is improved with several buildings divided into 360 apartments. (Exhibit 7) There is a parking area on the perimeter of the entire site with spaces in front of the buildings. The apartment complex was constructed circa 1959. (Exhibits 4 and 5)
- (2) Mr. Rosenthal, Applicant's witness, and managing member of the LLC, testified that Applicant purchased the apartment complex in June 2012. At time of purchase, and shortly before, the apartment complex had 360 units with a mix of three 3-bedroom units, 200 2-bedroom units and 157 1-bedroom units (defined as one bedroom or efficiency). (Exhibit 4)
- (3) Applicant applied for a Use and Occupancy Permit and a new apartment license. At that time Applicant learned that a license issued in 2004 either inadvertently or fraudulently contained a different mix, and number, of rental units. In researching the matter it became clear that the 1996 apartment license closely mirrored what was on site – a total of 360 apartments, with two efficiency units, 156 one-bedroom units, 199 two-bedroom units, and

3 three-bedroom units. (Exhibit 3) No apartment license issued subsequent to 1996 shows this number of units and mix of bedroom percentage.

(4) Staff with the Maryland- National Capital Park and Planning Commission reviewed the application for the new permit and offered the following comment:

This permit is for an existing apartment project in the R-10 Zone constructed in 1959, Capitol Crossing Apartments. Prior permit 29682-2004-U was approved and issued for 360 units of which 180 units were one bedroom units (50%) and 180 units were two bedroom units (50%). Permit 103-97-CU was approved for a community room in the apartments and this site plan also indicated the same unit count and bedroom mix. Since the apartments complied with current density and bedroom percentages certification of nonconforming use was not required. However per this new application the applicant had indicated there are now 359 units of which 159 are one bedroom (44.28%), 197 are two bedrooms (54.87%), and 3 are three bedrooms (0.835%). This unit mix is drastically different than what was previously approved. Has interior alterations taken place? This unit mix exceeds bedroom percentages and if the apartments have been altered a special exception is required for bedroom percentages in excess of what is allowed. Have the apartments always existed with this same unit mix and the prior permit was incorrect? If this can be documented then the apartment may possibly pursue certification of nonconforming use with a Planning Board public hearing. The applicant should research prior apartment licenses to see when this change occurred. Additional comments will be generated once additional information is provided. I faxed the comments to Dexter Price and I called and left a message for Sharon at the Donaldson Group.

10/24/13-Larry Taub called and we discussed the permit comments.

2/27/14-Larry Taub came in and we discussed the permit comments. He obtained copies of prior apartment licenses which indicated the unit mix on them. None of the licenses indicated that there were 180 one bedroom and 180 two bedroom units. Therefore that information that was provided on the prior 2004 site plan was incorrect. The licenses indicated that there were 157 one bedroom units and 203 two bedroom licensed until 1996. The 1996 license was then issued with 158 one bedroom, 199 two bedroom, and 3 three bedroom units. The approval and issuance of this license in 1996 clearly allowed an alteration of what was already a nonconforming use since the apartments already exceeded bedroom percentages at this time. The addition of 3 three bedroom units was a clear alteration. Therefore Larry will pursue Validation of Apartment License Issued in Error.

(Exhibit 5)

(5) The Multi-Family License at issue issued by the County in 1996 most closely mirrors what was on site prior to Applicant's purchase until the present.

(6) In total, Applicant expended in excess of \$20,000,000.00 to purchase the site. (Exhibit 11(a)) It has since expended over \$7,000 for upkeep, such as plaster repairs in units, painting, drywall, snow removal, and laundry room repairs. (Exhibit 12) All sums were spent in reliance on the apartment license issued in 1996.

(7) Mr. Rosenthal averred that no fraud or misrepresentation was practiced in obtaining the Multifamily Rental License and that no appeal or controversy was pending before any administrative body at the time of the permit’s issuance.

(8) Thus, this approval is sought to validate a Multifamily Rental use that has existed on site for over 60 years. Applicant stated that the property is surrounded by other apartment complexes, single-family homes across Southern Avenue and within the boundaries of Washington, D.C. and a cemetery. Thus, the use blends in with the adjoining properties, and the property is well maintained. Nothing in the record indicates that the use has had any adverse impact upon the neighboring properties, or in any way alters the character of the neighborhood. Approval under these circumstances would not be against the public interest.

**LAW APPLICABLE**

(1) Apartment License #7034 (M-384) and the accompanying Site Plan may be validated as issued in error in accordance with Section 27-258 of the County’s Zoning Ordinance. The portions relevant to the instant request are Sections 27-258 (a), (g) and (h), which provide 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.

\* \* \* \* \*

(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 non-conforming use.**

(1) Any building, structure, or use for which a permit issued in error has been validated by the Council shall be deemed a non-conforming building or structure, or a certified non-conforming use, unless otherwise specified by the Council when it validates the permit. The non-conforming building or structure, or certified non-conforming use, shall be subject to all of the provisions of Division 6 of this Part.

**CONCLUSIONS OF LAW**

The law expressly allows the Applicant to seek validation of the Apartment License if it was validly issued. (Prince George’s County Code, Section 27-258(a)) The Applicant was granted the license to allow it to rent apartment units at the subject property. (Exhibit

3) Accordingly, the permit at issue was validly issued. There is no evidence to support a finding that fraud or misrepresentation was practiced in obtaining the apartment license. (Section 27-258(g)(1)(A)) The record indicates that there was no known appeal or controversy regarding the issuance of the license at the time of issuance. (Section 27-258(g) (1) (B)) The Applicant acted in good faith in seeking the license and expended considerable funds (in excess of \$20 million dollars since its purchase ) in reliance on said license. (Section 27-258 (g)(1)(C)) The validation will not be against the public interest, as the instant request will merely validate a use that has existed at the site for over 60 years. The validation of the license will result in no discernable difference in the use of the subject property and, therefore, will not be against the public interest. (Section 27-258 (g) (1) (D))

### **RECOMMENDATION**

It is recommended that the District Council validate Multi-Family Rental License No. No.7034/(M-384), in accordance with Applicant's Site Plan. (Exhibit 7) If approved, the District Council should declare the apartment complex with 360 dwelling units to be a Certified Non-Conforming Use.