

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

ERR-225

DECISION

Application:	Validation of Use and Occupancy Permit No. 689508-U
Applicant:	Calvert Investors, LLC
Opposition:	None
Hearing Date:	January 30, 2013
Hearing Examiner:	Maurene Epps Webb
Recommendation:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-225 is a request for the Validation of Use and Occupancy Permit No. 689508-U issued in error on March 16, 1973, to operate a 31-unit multifamily apartment building located at 4611/4613 Calvert Road in College Park, Maryland. (Exhibit 4) The subject property is located within the City of College Park (the "City"), but not within the historic district.
- (2) The subject property consists of approximately 1.02 acres of land, in the R-18 (Multifamily Medium Density Residential) Zone.
- (3) No one appeared in opposition to the request for validation.

FINDINGS OF FACT

- (1) The subject property is 1.02 acres in size, and is improved with a 6,762 square foot masonry brick building divided into two (2) apartments. There is a parking area with 42 spaces in front of the building. (Exhibits 17 and 19)
- (2) Applicant submitted the Use and Occupancy permit issued near the time of construction. (Exhibit 4) Applicant also submitted the Multifamily Rental License issued by the City in 1973, and its annual City Occupancy permits issued from 1974 until the present. (Exhibits 14 and 15) The Multifamily Rental License and Occupancy Permits were issued for a total of 31 dwelling units.
- (3) J.L. and M.H. Kane were the original owners of the property. (Exhibit 7) The sole member of Calvert Investors, LLC is their son, James Kane. The subject property was transferred to Calvert Investors, LLC in June 2003 (after the death of his father but prior to his mother's). (Exhibit 9; T. 14) Mr. Kane testified that he did not believe that the transfer required the issuance of a new Use and Occupancy permit; the matter was litigated and in

2012 the court disagreed. Accordingly, a request was filed by Calvert Investors, LLC for a new Use and Occupancy permit (Permit No. 28651-2012-U). (Exhibit 6; T. 15)

(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 building in the R-18 Zone. I cannot find any prior records in the multifamily files or Property Address records. Tax assessment records do not provide a date of construction, therefore, I do not know the date of construction. Per the plan submitted there are 24 one bedroom units and lot area is 44,523 s.f. (tax assessment shows 41,524 s.f.). Based on these figures the site provides a density of 23.4 units per acre which exceeds the maximum density of the R-18 Zone which is 12 units per acre. It appears that certification of nonconforming use will be required. However a site plan must be submitted demonstrating compliance to the R-18 regulations in effect at the time of construction to determine if the apartments qualify for certification. The property is located within the City of College Park, therefore the City of College Park Planning Department must be contacted for the instructions and information regarding their certification process. I emailed the comments to Andy Facchina Per revised plans the building was constructed in 1973. Per the 1973 zoning analysis provided on the revised site plan that site does not comply with the minimum net lot area per dwelling unit requirement of 2,000 s.f. per dwelling unit because only 1,436 s.f. is provided. The site also does not comply with minimum green area requirement of 60% by providing only 50.4%. Therefore the apartments do not qualify for certification of nonconforming use and must pursue validation of permit issued in error for permit 689508-U if at the time of issuance the apartments had the 31 units and exceeded green area requirements. Otherwise validation of apartment license issued in error may be required.

(5) The Use and Occupancy Permit at issue was granted by the County. The Use and Occupancy Permit did not reference the number of individual units, but did reference the address of 4611-4613 Calvert Road. The City has issued City Occupancy Permits since 1974 (Exhibit 15). The City Permits have all referenced 31 units, and 31 units are on the site today.

(6) In total, Applicant expended in excess of \$76,000 annually on repairs, utilities, and taxes for the property. (Ex. 20, T. 12-17) All sums were spent in reliance on the Use and Occupancy permit issued in 1973.

(7) Mr. James Kane 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 40 years. Applicant submitted recent photos taken by the land planner, (Exhibits 16 (a)-(f) and 19), as well as an aerial photo of the adjacent properties. They reveal that 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) Use and Occupancy Permit No. 689508 -U 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 Use and Occupancy Permit if it was validly issued. (Prince George's County Code, Section 27-258(a)) The Applicant was granted the permit to allow it to rent apartment units at the subject property. (Exhibit 4) At the same time the City issued its own licenses for the 31 units, and that number has remained the same over the years. Accordingly, the permit at issue was validly issued.¹ There is no evidence to support a finding that fraud or misrepresentation was practiced in obtaining the Use and Occupancy permit. (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 \$70,000 annually for a few decades) 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 40 years, and the City has not indicated any opposition

¹ There is no authority to certify the licenses issued by the City. However, the City licenses bear proof that Applicant has rented 31 units since the inception of the use, and supports the argument that 31 units should be certified herein.

to the request. The validation of the permit 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 approve the request and validate the permit conditions shown on the Applicant's Site Plan. (Exhibit 17) If approved, the District Council should declare the use to be a Certified Non-Conforming Use.