

<b>IN RE: PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
SW side of Selma Avenue, 186 feet S		
of the c/l of Sulphur Spring Road	*	DEPUTY ZONING
13 <sup>th</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	COMMISSIONER
(5512 Selma Avenue)		
	*	FOR BALTIMORE COUNTY
<b>Travis Vibbert</b>		
<i>Petitioner</i>	*	<b>Case No. 2009-0104-SPH</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Travis Vibbert, the legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the continuation of 2 dwelling units as a nonconforming use in a D.R.5.5 Zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing was Petitioner Travis Vibbert and Amar S. Weisman, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Long Van Bui, the professional land surveyor who prepared and sealed the site plan. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property consisting of approximately 0.147 acres, more or less, zoned D.R.5.5. The property is located on the southwest side of Selma Avenue, south of Sulphur Spring Road, in the Halethorpe area of Baltimore County. It is improved with an existing two-story dwelling with basement built in 1925. Petitioner purchased the property in 2007 as a dwelling with two apartments and has

rented the apartments since that time. Petitioner is seeking special hearing relief to continue the use of the two apartments as a nonconforming use.

In support of the requested relief, Petitioner submitted a floor plan of the dwelling with an accompanying exterior photograph that was marked and accepted into evidence as Petitioner's Exhibit 2. The floor plan is indicative of two apartments. One apartment is located in the basement with a separate entrance to the rear. It has a bedroom, bathroom, storage room, and kitchen area. There is also a separate utility room that serves both apartment units. The second unit consists of the first and second floors of the dwelling. The first floor includes a front entrance with enclosed porch, bedroom, living room and dining room, kitchen, and bathroom. The second floor also includes two bedrooms and a bathroom.

In support of the special hearing request, Petitioner presented several affidavits that recited the historical use of the property. The first affidavit dated December 21, 2007 was from Robert Francis Wolf and indicates that Mr. Wolf's parents owned the dwelling at the subject location, and that he was raised there and lived there with his parents in the first and second floor unit beginning in 1928. Mr. Wolf also indicated in his affidavit that his son lives in the community and has a place of business in the neighborhood that Mr. Wolf visits weekly. To his knowledge, the dwelling has been used continuously as two apartments every year since at least 1955. A copy of Mr. Wolf's affidavit was marked and accepted into evidence as Petitioner's Exhibit 6. The second affidavit dated December 21, 2007 was from Robert L. Wolf -- Robert Francis Wolf's son. The younger Mr. Wolf verified that his grandparents owned the two unit dwelling until it was inherited by his father. He indicated he visited the first and second floor apartment where his grandparents lived many times as a child, and indicated that the two apartment units have been continuously

occupied every year since at least 1979. The younger Mr. Wolf's affidavit was marked and accepted into evidence as Petitioner's Exhibit 7.

In further support of the requested relief, Petitioner submitted photographs that show the separate features of the two apartments. These photographs, marked and accepted into evidence as Petitioner's Exhibits 8A through 8D, show the two separate entrances, the basement and first floor kitchens, the basement and second floor bathrooms with tub/shower, and the two central air conditioning units that serve each unit.

The Zoning Advisory Committee comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated November 20, 2008 which indicate that the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains. In addition, any further development of this site may be subject to the water quality regulations, and may include establishment of a Forest Buffer Easement from the adjacent stream.

Section 104 of the B.C.Z.R. governs nonconforming uses in Baltimore County. A nonconforming use is defined in Section 101 of the B.C.Z.R. as "[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." Often, the nonconforming use designation is applied to "grandfather" an otherwise illegal use. If Petitioner can establish that the use began prior to the effective date of the zoning regulation which prohibited such use, and the use has continued without interruption since that time, that use may continue as nonconforming.

In this case, the relevant date is March 30, 1955, the date the current B.C.Z.R. were adopted. Based upon the testimony and evidence presented, I am persuaded to grant relief for two dwelling units. The evidence indicates that the home was built in 1925 and the first and second

floor was used as an apartment as far back as 1928. The dwelling has separate kitchen, bedroom, bathroom, and air conditioning facilities for each of the two units. The evidence also indicates that the dwelling has been used continuously as two separate apartment units since at least 1955. Therefore, I shall approve the use of the subject property as nonconforming for the two units.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 28<sup>th</sup> day of January, 2008 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the continuation of 2 dwelling units as a non-conforming use in a D.R.5.5 Zone be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz