

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
S side of Schwartz Avenue, 895 feet W of		
the c/l of York Road	*	DEPUTY ZONING
9 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(421 Schwartz Avenue)		
	*	FOR BALTIMORE COUNTY
Andrew T. McQuaid		
<i>Petitioner</i>	*	Case No. 2009-0175-SPH

* * * * *

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 Andrew T. McQuaid, 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 approve the non-conforming use of a two-family dwelling prior to 1955. 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 Andrew T. McQuaid. Also appearing in support of the requested relief was Melody Taylor, the proposed buyer of the property. Appearing as interested citizens were nearby neighbors McCanner Perry of 439 Schwartz Avenue, Betty Dorsey and Cynthia Dorsey of 6324 Smith Court, and G. Zelinski of 433 Schwartz Avenue. There were no Protestants in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and consists of approximately 11,000 square feet or 0.25 acre, more or less, zoned D.R.5.5. The property is located on the south side of Schwartz Avenue, west of York Road near Rogers Forge just north of the Baltimore City/County line. The property is improved with a two-story

dwelling with vinyl siding and a macadam driveway that runs along the right side of the property. Petitioner purchased the property in 1986 as his first home. When he bought the property, it was his understanding that the dwelling contained two separate apartment units -- one on the first floor and the other on the second floor. Indeed, the dwelling had two separate entrances in front for the two apartments. Petitioner also indicated that he made significant improvements to the home, including the installation of the aforementioned vinyl siding, as well as a covered front porch. A photograph of the dwelling as it appears today was marked and accepted into evidence as Petitioner's Exhibit 3.

At this juncture, Petitioner desires to sell the property to Melody Taylor; however, prior to the sale, the parties desire to confirm the legal status of the two apartments in the dwelling. Ms. Taylor intends to reside on the first floor and rent the second floor apartment. Petitioner explained that when he purchased the dwelling in 1986 and obtained permits for the improvements he was making to the exterior and the interior units, he was told by the County's Permit Office that he would need to verify that the dwelling had in fact been used as two separate apartments. As such, at that time, Petitioner obtained affidavits from the neighbors on each side of the property. In particular, Petitioner obtained an affidavit from William Aguas of 421½ Schwartz Avenue that was marked and accepted into evidence as Petitioner's Exhibit 4A. Mr. Aguas indicated he was aware the dwelling had been used as two apartments since at least 1984. Another affidavit was obtained from Yvette McDougald of 417 Schwartz Avenue and marked and accepted into evidence as Petitioner's Exhibit 4B. Ms. McDougald indicated that she was aware the subject dwelling had been used as two apartments since at least 1965.

Testifying as an interested citizen was McCanner Perry of 439 Schwartz Avenue. Ms. Perry appeared with several neighbors and on behalf of their neighborhood organization, the

Schwartz Avenue Neighborhood Group, to learn more about the requested relief and to make sure they were informed as to what Petitioner is intending with regard to the property. Upon listening to Petitioner's presentation and meeting Ms. Taylor, Ms. Perry and the other neighbors indicated they were supportive of the requested relief. In fact, these citizens verified that the dwelling has been used as two apartments for many years. Ms. Perry indicated she has lived in her home for approximately 50 years and to her knowledge, the dwelling has always had two apartments -- certainly since prior to 1955. Petitioner also added that the dwelling has two separate entrances in front and that each unit has its own separate gas and electric meters. He also noted that the dwelling was originally constructed in 1903.

The Zoning Advisory Committee comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated February 4, 2009 which states that when initially reviewing the Petitioner's request and site plan, the Office had some concerns about recommending approval of a two unit dwelling on a small one-way street. It appeared that this would further exacerbate a constricted situation. After making a site visit there does in fact appear to be some available on-street parking directly in front of the proposed property and across the street. Nonetheless, the Planning Office recommends the applicant provide an additional on-site parking space.

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. was adopted. Based on the testimony and evidence presented, I am persuaded to grant the special hearing relief for two apartments in the dwelling. The affidavits accepted into evidence as Petitioner's Exhibits 4A and 4B and the testimony from Petitioner and nearby neighbors leads me to conclude that the dwelling has been used as two apartments since before the 1955 Regulations without interruption for more than one year, thus meeting the requirements of a nonconforming use. As to the recommendation of the Planning Office for an additional on-site parking space, I will not require Petitioner to reconfigure the parking. As shown on the photograph that was accepted into evidence as Petitioner's Exhibit 3, the existing parking pad appears to accommodate two vehicles. In addition, there appears to be sufficient on-street parking to accommodate additional vehicles should the need arise.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, 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 23rd day of February, 2009 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 approve the non-conforming use of a two-family dwelling prior to 1955 be and is hereby GRANTED, subject to the following:

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.

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