

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NW/S Leeds Avenue, 235' SW of c/line of		
Knecht Avenue	*	ZONING COMMISSIONER
(4402 Leeds Avenue)		
	*	FOR
13 th Election District		
1 st Council District	*	BALTIMORE COUNTY
Robert VanDevender, et ux, <i>Legal Owners</i>	*	Case No. 2009-0225-SPH
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Robert H. and Eleanor R. VanDevender. The Petitioners request a special hearing to approve an existing two-apartment detached dwelling on 8,160 square feet in lieu of the required 10,000 square feet, as a legal, nonconforming use. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested nonconforming use was Eleanor VanDevender, property owner. James V. Landriscina, an adjacent property owner, appeared along with his brother as a Protestant in opposition to the requested relief. There were no other interested persons in attendance nor were there any adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agencies.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management (Civil Citation No. 52968). Specifically, the Petitioners were cited pursuant to Section 402 of the B.C.Z.R. for the illegal conversion of a dwelling on residential property. A hearing before Code Enforcement Hearing Officer Donald E. Brand was held on January 13, 2009 in which Mr. Brand advised the

VanDevenders to file for a Special Hearing determination by February 1, 2009. While the merits of Mr. Brand's Order are not being reviewed in this separate zoning matter, the outcome of this case will affect the responsibilities of the Petitioners pursuant to the January 13th Order of the Code Enforcement Hearing Officer.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel (40' wide x 204' deep) located on the north side of Leeds Avenue, north of Route 1 – Southwest Boulevard near the intersection of I-695 in the Arbutus area of the County. The property contains a gross area of 8,160 square feet, more or less, zoned D.R.5.5 and is improved with a two-story frame dwelling that at the time of the hearing was being used as two (2) apartments. Petitioner submitted a floor plan of the second floor of the existing dwelling, which was marked and accepted into evidence as Petitioners' Exhibit 7. The floor plan, along with a series of photographs that were collectively marked and accepted into evidence as Petitioners' Exhibit 6, shows a 590 square foot one-bedroom apartment with a kitchen, bathroom, living and bedroom area as well as a walk-in closet. According to the Petitioner, her son lives on the lower level of the dwelling with his girlfriend and the second floor apartment is being leased by a young woman named Jessica Bowen. Petitioner submitted a lease for the second floor apartment, which was marked and accepted into evidence as Petitioners' Exhibit 5. The lease reveals that Ms. Bowen is renting the apartment from February 1, 2009 through August 31, 2009.

Petitioner submitted several exhibits in an effort to prove that the nonconforming use of the subject property as two apartments in one residential dwelling has existed in a continuous and uninterrupted manner since 1955. The Affidavits of Gloria Minarik and Alyce Dassing were respectively marked and accepted into evidence as Petitioners' Exhibits 3 and 4. Ms. Minarik declared that her sister Vivian Marino, now deceased, rented the apartment on the second floor of

the subject property when her husband was serving overseas in World War II. Ms. Dassing declared that she rented the second floor apartment from 1978-1980. Unfortunately, Ms. VanDevender was not able to offer any additional witnesses to prove the continuous and uninterrupted use of the property since 1955. She did, however, testify that she lived next door to the property and believed that the dwelling had always been used as two apartments since her childhood years. According to her, it was the prior tenant, Vivian Marino, who was involved in getting her parents together and that her grandparents purchased the property in 1978. As far back as she could remember (and she has lived in close proximity to the property for 49 years), she testified the property was used as a two-apartment dwelling.

James Landriscina, an adjacent property owner, appeared and testified as a Protestant in opposition to the requested relief. Mr. Landriscina submitted photographs in furtherance of his argument that there is inadequate parking on Leeds Avenue to support an additional apartment. Those photographs were marked and accepted into evidence as Protestant's Exhibit 1. Mr. Landriscina also submitted photographs of an automobile accident that occurred in front of the subject property and a photograph of debris that has accumulated on the property. These photographs were marked and accepted into evidence as Protestant's Exhibits 2 and 3. In addition to his beliefs that the surrounding neighborhood is not equipped to support an additional apartment, Mr. Landriscina also testified that he has lived in the neighboring home since 1997 and never saw the apartment being rented until approximately one (1) year ago when the Petitioner moved out of the home and allowed her son to live on the lower level.

Section 402.2 of the B.C.Z.R. is the controlling regulation involving conversions of a one-family dwelling to a two-family duplex. That section (Chart) requires a lot width of 80 feet at the front building line and a lot area of 10,000 square feet (1,840 more square footage than the

Petitioners have), thus preventing, as a matter of right, a two-apartment use in the D.R.5.5 zone. Instead, Petitioners have attempted to establish a nonconforming use pursuant to Section 104 of the B.C.Z.R., which states as follows:

“A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, *or any abandonment or discontinuance of such nonconforming use for a period of one year or more*, the right to continue or resume such nonconforming use shall terminate.”

It is well settled law that nonconforming uses are not favored. Nonconforming uses are contrary to the zoning scheme established by the zoning regulations. *See McKemy v. Baltimore County*, 39 Md. App. 257 (1978). Moreover, as I advised Mrs. VanDevender at the outset of the public hearing, it is the burden of the Petitioner to conclusively prove the nonconforming character of the proposed use. Clear and convincing testimony and evidence must be produced to show that the use existed prior to 1955 and that such use has been continuous and uninterrupted since that time.

Considering all of the testimony and evidence presented at the public hearing, I am not persuaded that the Petitioners have met their lofty burden in this case. In my judgment, the credible and reliable testimony offered is persuasive to a finding that the property was used periodically as a two- bedroom apartment. However, understandably, Ms. VanDevender had a difficult time producing witnesses that can corroborate her theory that the use of the property has existed in a continuous and uninterrupted manner for the entire statutory period. Accordingly, the Petition must be denied and the two-apartment use must be discontinued at the expiration of the current lease, which runs until August 31, 2009.

It must be noted that this decision is not a reflection upon the Petitioners in this case. Ms. VanDevender made a reasonable attempt to legalize her use of the subject property by pursuing and

obtaining a Rental Housing License from the Department of Permits and Development Management. The License was marked and accepted into evidence as Petitioners' Exhibit 2. It is hard to imagine that a County citizen is charged with knowing that although he/she has obtained a license to rent an apartment on their property that he/she could still be held in violation of the B.C.Z.R. It also appears that this may not be a problem that is confined to the property at stake in this case. Ms. VanDevender submitted a zoning map of the surrounding area, which was marked and accepted into evidence as Petitioners' Exhibit 8. The map supports Ms. VanDevender's statement that numerous homes in the surrounding area are used as rental homes. Considering that many of the properties in the Arbutus area of Baltimore County do not contain the requisite area square footage and are not 80 feet wide at the front building line so as to maintain two apartments as of right, this case may represent a recurring problem for residents in the surrounding area. In any event, given that the Petitioners went to the trouble of obtaining a Rental Housing License, I would not recommend that she be charged with a civil fine and suggest that she simply be required to cease use of the property as two apartments at the expiration of the current lease.

Pursuant to the advertisement, posting of the property, and public held thereon, and for the stated reasons, the Petition for Special Hearing should be denied.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County, this 15th day of May 2009, that the Petition for Special Hearing seeking approval of an existing two apartment dwelling on the subject property, as a legal, nonconforming use, in accordance with Petitioners' Exhibit 1, be and the same is hereby DENIED; and

1. Petitioners shall be required to cease the rental of the property as a two-apartment on August 31, 2009, at the expiration of the current lease, and shall return its use to that of a single-family dwelling.

2. To assure compliance with this Order, the Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the building to insure compliance.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County