

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
SE/S Campfield Road, 75' SW of		
Carol Road	*	ZONING COMMISSIONER
<b>(3651 Campfield Road)</b>		
	*	FOR
3rd Election District		
4 <sup>th</sup> Council District	*	BALTIMORE COUNTY
Denise L. Smith	*	<b>Case No. 2009-0280-SPH</b>
<i>Petitioner</i>		

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**AMENDED ORDER**

This matter came before the undersigned Zoning Commissioner for consideration of a Petition for Special Hearing filed by Denise L. Smith requesting confirmation that a non-conforming use of a two-family dwelling existed on the subject property. Following the public hearing, I denied the requested special hearing relief by written Order, dated July 9, 2009. Subsequently, on August 7, 2009, the Petitioner filed a Motion for Reconsideration. Essentially, it is pointed out that significant new evidence was obtained bearing on the dwelling's two-family use that covered the missing time period of 1955 to 1977. See supplemental documents received as Petitioner's Exhibit 5. In an effort to correct the record and address the burden of proof required of the Petitioner, the Motion was granted and continued proceedings were resumed on Thursday, October 1, 2009.

By way of background, the subject rectangular shaped property located in the Lochearn area of the County contains 6,300 square feet improved by a two-story, stone dwelling in the D.R.5.5 zoning classification. The findings of fact and conclusions of law contained in my initial Order, to the extent applicable, are adopted by reference herein. That evidence included the floor plan for the first and second floors and was persuasive that the original dwelling was built as two apartments with independent kitchens, bathrooms, living areas and entrances. Although I am appreciative of the Lochearn Improvement Association's opposition to a two-family use in this neighborhood, I find

that the membership, officers and board members have offered no testimony and evidence based on personal knowledge of the subject property's use. Ms. Tracy E. Clausen appeared and participated at the October Motion's hearing but could offer no additional evidence to refute the non-conforming use.<sup>1</sup>

As noted previously, the relevant date in this case is March 30, 1955, the date the current zoning regulations were adopted. Based on the testimony and evidence, I am convinced that the subject property has been used without interruption as a two-family dwelling since before 1955. The evidence indicates that the dwelling was designed and built in 1951 as two separate apartments, there are separate BGE electric meters and Patricia Davis had testified at the initial hearing concerning the non-conforming use from 1977 to present. Further uncontradicted enlightening facts were presented at the Motion's hearing covering the time period from the 1950's through 1977. An affidavit from Nancy Girard who lived at 3716 Campfield Road confirmed the use continued without interruption from 1960. D. Jean Gralewicz, a long-time friend and neighbor of Walter D. Folger, the original owner, confirmed the use from 1950 to 1960. These letters, along with numerous public records identifying the actual tenants, collectively marked and accepted into evidence as Petitioner's Exhibit 5, corroborate a two-family dwelling use.

Based on the testimony and evidence, I am convinced that the subject property has been used continuously, without interruption, as a two-family dwelling since approximately 1955. In my judgment, based upon the numerous exhibits, I am persuaded to grant the special hearing relief and

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<sup>1</sup> Ms. Clausen testified that the association met and voted to oppose the instant Motion. The board believes that the Petitioner, when purchasing the property in November 2008, obtained financing by stating it was "for a single-family dwelling" taking a 180-degree divergence from the two-family use she now desires. The Lochearn Improvement Association asserts that she is now estopped from proceeding on the instant petition.

shall approve the use of the subject two-family dwelling as a legal, non-conforming use.

NOW, THEREFORE, in consideration of Petitioner's request for modification, my Order of July 9, 2009, shall be amended in accordance with the following:

IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 8<sup>th</sup> day of October 2009, that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a non-conforming use for a two-family dwelling, be and is hereby GRANTED.

IT IS FURTHERED ORDERED that any appeal of this decision shall be made within thirty (30) days of the date of this Order in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

WJW:dlw

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

- c: Denise L. Smith, 1511 Barrett Road, Baltimore, Maryland 21207
- Patricia A. Davis, 3652 Campfield Road, Baltimore, MD 21207
- Christine Cypress, 3810 Lochearn Drive, Baltimore, MD 21207
- Cheryl B. Boston, 3708 Cedar Drive, Baltimore, MD 21207
- Herman Johnson, 3724 Oak Avenue, Baltimore, MD 21207
- Tracy E. Clausen, 3621 Patterson Avenue, Baltimore, MD 21207
- Joseph Smith, 3104 Auchentoroly Terrace, Baltimore, MD 21217
- Carla Singletary, 1010 Deer Ridge Drive, Baltimore, MD 21210
- People's Counsel; Code Enforcement Division, DPDM; File