

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SE/S Campfield Road, 75' SW of		
Carol Road	*	ZONING COMMISSIONER
(3651 Campfield Road)		
	*	FOR
3rd Election District		
4 th Council District	*	BALTIMORE COUNTY
Denise L. Smith	*	Case No. 2009-0280-SPH
<i>Petitioner</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 owner of the subject property, Denise Smith. The Petitioner requests a special hearing to approve an existing two-apartment detached dwelling on 6,300 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 Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested nonconforming use was Denise L. Smith, property owner, and Patricia A. Davis, a licensed real estate agent residing at 3652 Campfield Road. Members of the Lochearn Improvement Association, namely Christine Cypress, Cheryl B. Boston and Herman Johnson appeared as Protestants 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 not as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management but out of the Petitioner’s desire to legitimize the use which she believes began in 1951. In this regard, Ms. Davis testified that five (5) dwellings (3643, 3647, 3649, 3652 and 3653 Campfield

Road¹) were all originally built as two-unit homes, the earliest in 1925, others in the 1940's, early 1950's. Her testimony and affidavit (Petitioner's Exhibit 3) confirms the subject property's use as a two-unit dwelling since 1977.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel (50' wide x 126' deep) located on the south side of Campfield Road, just west of Carol Road in the Lochearn area of the County. The property contains a gross area of 6,300 square feet, more or less, zoned D.R.5.5 and is improved with a two-story stone dwelling that at the time of the hearing was being used as a single-family dwelling but featured two (2) apartments (1st and 2nd floors) with separate bath, kitchen and living areas. Petitioner submitted photographs (Exhibit 2) and documentation from BGE (Exhibit 4) documenting separate electrical meters and service dating back to 1964. She testified concerning the floor plan of the second floor of the existing dwelling. Since her purchase of the property in November 2008, she has used best efforts to obtain information from prior owners and residents with personal knowledge. To her dismay, she learned that most are now deceased.

Unfortunately Ms. Davis, who has leased the property in the past, 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. According to her, Mr. Walter Folger was the original owner. She met him in 1977 and he told her that since the home was built in 1951 it had always been used as a two-family dwelling. As far back as she could remember (and she has lived in close proximity to

¹ A computer search of both the Zoning Commissioner's Orders and Zoning data base failed to disclose zoning relief for any of these addresses.

the property for 32 years), she testified the property was used as a two-apartment dwelling. She confirmed that Folger and the Girard's, another family in the area who could attest to the use, are now all deceased.

Herman Johnson, who has resided in the area for 34 years, appeared and testified as a Protestant in opposition to the requested relief. Mr. Johnson is the Vice President of the Lochearn Improvement Association and has worked in the past as a Baltimore City Police Officer and City's Housing Authority. He is opposed to the request and testified that a two-family dwelling that is not occupied by the owner brings about a decrease in property values. This testimony was corroborated by the Association's President Christine Cypress and Board member Cheryl B. Boston, both having resided in the area for many years.

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 (3,700 more square footage than the Petitioner has), thus preventing, as a matter of right, a two-apartment use in the D.R.5.5 zone. Instead, Petitioner has 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 Ms. Smith 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 Petitioner has met her lofty burden in this case. In my judgment, the credible and reliable testimony offered is persuasive to a finding that the property was used as a two-bedroom apartment since 1977. However, understandably, Ms. Smith 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 not resume.

It must be noted that this decision is not a reflection upon the Petitioner in this case. Ms. Smith and Ms. Davis have made a reasonable attempt to legalize the use of the subject property by pursuing and obtaining affidavits and BGE documentation. Considering that many of the properties in the Lochearn/Arbutus areas 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.

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 9TH day of July 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 Petitioner's Exhibit 1, be and the same is hereby DENIED; and

1. Petitioner shall be required to cease the proposed rental of the property as a two-apartment and return its use to that of a single-family dwelling.
2. To assure compliance with this Order, the Petitioner shall permit a

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

WJW:dlw

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