

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
NE of Wilson Point Road; 505 feet SE *
from the c/l of Shore Road * DEPUTY ZONING
15th Election District *
6th Councilmanic District * COMMISSIONER
(1711 Wilson Point Road) * FOR BALTIMORE COUNTY
Douglas and Sue McKenzie * **CASE NO. 2010-0293-SPH**
Petitioners *

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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 the legal property owners, Douglas and Sue McKenzie. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a legal nonconforming use permitting two single-family dwellings on an existing lot of record in the D.R.5.5 Zone with less than 12,000 square feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief were Petitioners Douglas and Sue McKenzie and David Billingsley with Central Drafting & Design, Inc., who prepared the site plan and assisted Petitioners in the preparation of the Petition and their presentation at the hearing. There were no Protestants or interested citizens in attendance at the hearing.

Testimony and evidence presented revealed that the subject property is a rectangular shaped parcel consisting of approximately 10,650 square feet or 0.244 acre, more or less, zoned D.R.5.5. The property is located in the Middle River area of Baltimore County on the northeast side of Wilson Point Road with ingress/egress from same and water frontage on Stansbury Creek. The subject property is improved with two existing single-family dwellings and a pier, which can

be seen from the aerial photograph that was marked and accepted into evidence as Petitioners' Exhibit 6. The existing dwelling closest to Stansbury Creek consists of 1,008 square feet and was built in 1934 according to the Real Property Data Search printout marked and accepted into evidence as Petitioners' Exhibit 2. Photographs of the waterside house were marked and accepted into evidence as Petitioners' Exhibits 8A through 8C. The dwelling closest to Wilson Point Road consists of approximately 650 square feet, according to the impervious area survey conducted on April 5, 2010 and marked and accepted into evidence as Petitioners' Exhibit 5. Photographs of the roadside house were marked and accepted into evidence as Petitioner's Exhibits 7A through 7F. Access to the property is via a macadam driveway from Wilson Point Road running along the south side of the site. A concrete walkway provides access between the two dwellings. The existing improvements can be seen more clearly on the site plan and the referenced impervious area survey.

Petitioners request Special Hearing relief to legitimize the existing conditions and improvements on the property as a legal nonconforming use. Granting special hearing relief would permit Petitioners to continue to use the two single-family dwellings on the property, and would facilitate Petitioners' desire to renovate both structures. Petitioners purchased the subject property in March 2010 and their intent is to keep the two dwellings within the parameters of a legal nonconforming use.

In support of the requested relief, they presented evidence that the two structures on the property have been in place and used as single-family dwellings since before the initial adoption of Zoning Regulations in Baltimore County in 1945, or their comprehensive re-adoption in 1955. The Deed for Petitioners' purchase of the property was marked and accepted into evidence as Petitioners' Exhibit 3. Mr. Billingsley also submitted the record plat of the "Bull Neck" subdivision as recorded in 1931, which was marked and accepted into evidence as Petitioners'

Exhibit 4. The record plat shows the subject property, which is referred to as Lot 94A, as already being improved with a structure. Moreover, the Real Property Data Search marked and accepted into evidence as Petitioners' Exhibit 2, indicates the primary structure was built in 1934. Mr. Billingsley explained that the square footage data included in Exhibit 2 refers to the waterside dwelling that is shown on Exhibit 4. Next, he produced a Baltimore County Water Construction Plan dated June 5, 1940 that was marked and accepted into evidence as Petitioners' Exhibit 9, showing that two dwellings on the subject property were served by public water at that time. He asserted that this lends credence to the premise that both structures were used as separate dwellings. Mr. Billingsley additionally submitted a Baltimore County Sewer Construction Plan dated March 23, 1966 and completed in 1969, which was marked and accepted into evidence as Petitioners' Exhibit 10, indicating the subject property had two structures served by public sewer. Again, Mr. Billingsley asserted that this is further support for Petitioners' position that the two structures currently on the property were used as two separate dwellings prior to the enactment of the Zoning Regulations.

Finally, Mr. Billingsley submitted five notarized letters from individuals familiar with the area in general and the subject property in particular indicating that both of the structures located on the property have been maintained as residences since at least 1952. These letters were marked and accepted into evidence as Petitioners' Exhibits 11A through 11E. An additional letter of support for Petitioners' continued nonconforming use was submitted by the adjacent neighbor at 1713 Wilson Point Road and marked and accepted into evidence as Petitioners' Exhibit 12.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Department of Environmental Protection and Resource Management (DEPRM) dated June 11, 2010 indicate that development of the property must comply with the Chesapeake Bay Critical Area Regulations and that the lot is within a Limited

Development Area (LDA) and a Buffer Management Area (BMA) in the Chesapeake Bay Critical Area. Further, DEPRM noted that the lot coverage limits for this lot are 25% but that lot coverage may go up to 31.25% with mitigation for the amount over 25%. The 15% afforestation requirement will apply, which equates to 3 trees. All BMA requirements must be met, including mitigation.

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 use.” In addition, Section 104.1 of the B.C.Z.R. states that “[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 that nonconforming uses are not favored under the law. It is also recognized that nonconforming uses are contrary to the zoning scheme established by the Zoning Regulations and that the restrictions on such uses is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *See, County Council of Prince George’s County v. E.L. Gardner, Inc.*, 293 Md. 259 (1982). Moreover, it is the burden of a petitioner to prove the nonconforming use during the period of time at issue.

In 1945, the County first adopted Zoning Regulations and delineated four residential (A, B, C, and D) one commercial (E), and two industrial (F and G) zones. On March 31, 1955, the Regulations were updated to include specific residential zones to account for single-family and multi-family residences, as well as more precise classifications to deal with the minimum size required for a lot. In both the 1945 and 1955 Regulations, nonconforming uses were recognized and permitted to continue with certain exceptions and restrictions.

Turning now to the instant matter, the evidence indicates that two existing structures on the subject property have been used as single-family dwellings continuously prior to the initial adoption of the Zoning Regulations in Baltimore County in 1945 and their comprehensive re-adoption in 1955. The undisputed and uncontested testimony and evidence presented suggests that at least one of the structures (most likely the water side dwelling) was built by at least 1934 and as depicted in the Bull Neck Record plat, possibly before 1932. Moreover, the Baltimore County Water Construction Plan shows that the two enumerated structures were served by public water in 1940. Typically garages and other accessory structures do not have access to public water and would not be shown on plans of the type accepted into evidence as Petitioners' Exhibit 9. Thus, it is a reasonable conclusion that both structures were designated and used as dwellings by 1940. This documentary evidence is supplemented by the notarized certifications of members of the surrounding community indicating that the two structures have been used as single-family dwellings since at least 1952. As such, it is clear that the nonconforming use presented in this case predates, by a substantial period, the comprehensive re-adoption in 1955 and the earlier Regulations in 1945, and I am persuaded to grant Petitioners' requested relief. Based on the testimony and evidence presented, Petitioners have met their burden at law and are entitled to the special hearing relief for a legal nonconforming use.

As an aside, Petitioners should familiarize themselves with and be aware of the requirements and limitations mandated by Section 104 of the B.C.Z.R., which enumerates the parameters permitting continuation of a nonconforming use or structure, as well as the termination of such a nonconforming use or structure.

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 Petitioners' request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 22nd day of July, 2010 that Petitioners' request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a legal nonconforming use permitting two single-family dwellings on an existing lot of record in the D.R.5.5 Zone with less than 12,000 square feet, be and is hereby **GRANTED** subject to the following conditions:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Although the property and the structures thereon have been determined to be legally nonconforming, Petitioners are still subject to the requirements of DEPRM, and development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections 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