

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
W side of Cherrydell Road, 271 feet		
S of the c/l of Frederick Road	*	OFFICE OF ADMINISTRATIVE
1 st Election District		
1 st Council District	*	HEARINGS FOR
(112 Cherrydell Road)		
	*	BALTIMORE COUNTY
Janet L. Feuerstein and		
Paul Anthony Richards, Sr.		
<i>Petitioners</i>	*	CASE NO. 2012-0095-SPH

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge as Petition for Special Hearing filed by the legal owners of the property, Janet L. Feuerstein and Paul Anthony Richards, Sr. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a non-conforming use to allow a two family dwelling. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing held for this case were Petitioners Janet L. Feuerstein and Paul Anthony Richards, Sr. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Appearing in opposition to the Petitioners' request were a number of residents of the surrounding community. These individuals are too numerous to specifically identify herein. However, all have signed in on the Citizen and Protestant Sign-In Sheets. The case file contains numerous letters of protest from the community.

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, Approvals and Inspections¹. A Code Inspections and Enforcement Correction Notice was issued to the Petitioners on July 26, 2011, for the illegal conversion of the structure into apartments.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Petitioner Feuerstein testified that when the subject property was purchased from a corporate owner in Virginia, it was already physically set up as two apartments. She described the property as having a basement, and a first and second floor. There are what she describes as three bedrooms, three bathrooms, and two kitchen areas. There is an entrance on the first floor as well as separate entrances to the basement and second floor. She presented a copy of the property listing indicating three apartments in the building, but is only requesting permission to have two functioning apartments on the property. She intends, for the time being, to use the property as a residence for an adult daughter, another in college, and a 16-year old who still resides with her. She stated that she is familiar with the area. She noted that the subject house was in need of much repair, including the eradication of rats on the premises. She acknowledges an ongoing parking and traffic problem in the community. She testified that she and the co-Petitioner have cleaned up the property to the rear of the subject building, in order to permit the parking of two cars there.

On cross-examination, the witness acknowledged that although all the proposed present tenants will be her children, she has not given thought to what will happen to the property when

¹ Case No: CO-0098026

they leave. She confirmed that the Petitioners are asking for two apartments in the structure, although she noted that there were connections for three electric meters. She didn't know when the property had been converted to three units, or for that matter, if such a conversion was done legally or not. She admitted that she and the co-Petitioner had originally requested three apartments, but after being told by County officials that three units were impossible, reduced their request to two. If these two units are granted as a non-conforming use, they would do the appropriate internal repairs and alterations to accomplish that end result.

Petitioner Paul Richards testified that he already owned another property on Cherrydell Road, saw the subject property and, after consulting with Petitioner Feuerstein (who was an old friend), decided to buy it. He stated that the property was built in 1938 with what he believed were arrangements for multiple meters. He was unable to find any other evidence about the history of the subject structure or its use over the years. He also was not able to testify as to how long the property had been vacant before their purchase.

As far as he is concerned, Petitioner Feuerstein and her family can use the property for an indeterminate period in the future. When and if she ultimately no longer needs to stay on the site, he intends that they will then rent it out to others. He believes that based upon the number of entrances, the apparent connections from multiple electric meters and the lack of any interconnection between the first and second floors, that the property was intended to be two, if not three apartments. He stated that he went to the County requesting permission for three apartments. He was told he could not have permission for three, he is only requesting two apartments, which he believes will yield sufficient income when and if the co-Petitioner ultimately moves out. He testified that he is prepared to connect the first and second floor internally if permission for two apartments is granted.

In response to cross-examination by several of the Protestants, he acknowledged that he hasn't done any internal work to date to connect the two floors, pending the outcome of this case. Moreover, if his request for two apartments is not granted, he will pull out of the project, as it would not generate sufficient income to justify his rehabilitation efforts. Finally, he noted that he needs to know now whether or not he will be able to convert the property into at least two apartments; if he is, he intends to borrow sufficient funds to do the necessary internal adjustments. He will not do so if their request is denied.

The Protestants testified that they became aware of the situation at the subject property when they observed re-framing work being done on the inside of the subject house. These witnesses raised issues as to how many apartments were in fact in the building over the years, when such use originally began, and how long the property had been vacant. They have significant concerns as to traffic and parking in the neighborhood if the petition is granted, as well as questions as to increased density and garbage emanating from the site.

Petitioners request is based upon a belief that the requested use is permitted as a "non-conforming use". In Baltimore County, non-conforming uses 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." The B.C.Z.R. provides that these uses may continue "provided that upon any change from such non-conforming use to any other use whatsoever, **or any abandonment or discontinuance of such non-conforming use for a period of one year or more** (emphasis added), the right to continue or resume such non-conforming use shall terminate." B.C.Z.R. Section 104.1. Moreover, the Court of Appeals has repeatedly stressed that non-conforming uses are disfavored and "local ordinances must be strictly construed in order to effectuate the purpose of eliminating non-conforming uses." *Trip*

Associates, Inc. v. Mayor and City Council of Baltimore, 392 Md. 563, 573 (2006), citing *County Council v. Gardner, Inc.*, 293 Md. 259, 268 (1982). Indeed, the Court has held that the “earnest aim and ultimate purpose of zoning was and is to reduce non-conformance to conformance as speedily as possible with due regard to legitimate interests of all concerned.” *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 307 (1957).

As with all non-conforming use cases, the burden is on the Petitioner to produce evidence that a legal non-conforming use existed on the subject property prior to the year in which a change in the zoning regulations rendered it an unpermitted use. Petitioners must also establish that the requested non-conforming use actually existed, was used openly and continuously, and suffered no abandonment or cessation of use as set forth in the zoning regulations.

Applying the above to the instant matter, Petitioners have not established if the property has ever actually been used for a non-conforming use; nor have they been able to show that such use has continued openly. Finally, and most importantly, the Petitioners have acknowledged that the property was vacant and owned by a Virginia corporation when they purchased it. They have failed to establish in any way that the use was not discontinued or abandoned for a period of a year or more at the time of their purchase. Therefore, pursuant to the case law and the zoning regulations, the Petitioners have failed completely to establish any of the pre-requisites or requirements for the subject property to be considered non-conforming.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held and for the reasons set forth above, the relief requested is DENIED.

THEREFORE, IT IS ORDERED, this 20th day of January, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing to permit the non-conforming use of a two family dwelling, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Code Inspection and Enforcement Division of the Department of Permits, Approvals and Inspections shall, upon inspection of the property, take those steps necessary to ensure compliance with the Baltimore County Code and regulations.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:dlw