

IN RE: **PETITION FOR SPECIAL HEARING**
(119 Main Street)
Bessie M. Martin
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0017-SPH**

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ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Petitioner Bessie M. Martin. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Administrative Law Judge should approve a non-conforming use for two (2) apartments in a DR 5.5 zone. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing held for this case was Mary Strawther and Bettie Martin. The Petitioner's daughters indicated their mother is very ill and is hospitalized at GBMC (*See* Exhibit 4), and they presented the case on her behalf. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. The file does not contain any letters of opposition or protest.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Planning on August 20, 2012, indicating the following:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning recommends the Administrative Law Judge determine if the subject use (2 apartment units in one building) is a legally non-conforming use. The Department of Planning has no position on the aforementioned as no supporting documentation regarding the history of the property accompanied the petition. However, this department requests that any relief granted be subject to the petitioner repairing and upgrading the subject apartment building. Upgrades should complement existing architecture in the surrounding neighborhood and upgrade the visual aesthetic of the subject site.

Testimony and evidence revealed that the subject property is 3,125 square feet (.070 acre) and is zoned DR 5.5. The Petitioner and her husband purchased the home in 1971 at which time the property was occupied by two tenants, one living in an upstairs apartment and one living in the downstairs apartment. The Petitioner's daughters indicated that their parents have since 1971 rented two apartments in the subject property, and they provided documentation showing they have secured the necessary licenses from Baltimore County to operate a rental property at this location.

But more importantly, the Petitioner presented the affidavit of Alfred Wilcox (Exhibit 2), who has resided in the neighborhood (he lives at 123 Main Street, just two houses down from the subject property) since 1954. Mr. Wilcox indicated that since June 1954, the dwelling at 119 Main Street has been occupied as a two apartment building, and has been occupied by renters/tenants every year since that time.

In these circumstances, the Petitioner has established that the two apartment use qualifies as a lawful nonconforming use under county and state law. Baltimore County adopted its first set of zoning regulations in 1955, and prior to that time – as noted above – the Petitioner's predecessors in title had used the property as a two apartment dwelling, which is of course prohibited under current zoning regulations. But that is the essence of a nonconforming use, and

the property at 114 Main Street enjoys that status unless and until such time as the apartment use is discontinued and/or abandoned, as provided in B.C.Z.R. § 104.

THEREFORE, IT IS ORDERED, this 25th day of September, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Administrative Law Judge should approve a non-conforming use for two (2) apartments in a DR 5.5 zone, be and is hereby GRANTED.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw