

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(404 E. and 406 E. Pennsylvania Ave.)</b>		
9 <sup>th</sup> Election District	*	OFFICE OF ADMINISTRATIVE
5 <sup>th</sup> Councilmanic District		
Luz Elena Ampudia-Kordell &	*	HEARINGS FOR
Elizabeth Kordell		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2013-0141-SPH</b>

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by J. Neil Lanzi, Esquire, on behalf of Luz Elena Ampudia-Kordell and Elizabeth Kordell, legal owners. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7, 104.1 and 402.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- (1) To allow the continuation of the non-conforming multi-family (semi-detached dwelling) use of the subject property containing:
  - (a) A lot width of 50 ft. in lieu of the required 80 ft.;
  - (b) A lot area of 4,845 sq. ft. in lieu of the required 8,050 sq. ft.;
  - (c) A minimum side yard of 8 ft. in lieu of the required 15 ft. (interior lot); and
  - (d) A minimum sum of side yards of 20 ft. in lieu of the required 30 ft. (interior lot).
  
- (2) To allow the continuation of the non-conforming multi-family (semi-detached dwelling) use of the subject property containing:
  - (a) A lot area of 4,845 sq. ft. in lieu of the required 6,000 sq. ft., and
  - (b) A minimum side yard of 8 ft. in lieu of the required 10 ft.

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 were Sadie and Richard Goldring, Andrew Kulp, Anthony and Luz E. Ampudia-Kordell, Heather Wirth and Thomas J. Hoff, J. Neil Lanzi, Esquire appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no interested citizens in attendance in opposition to Petitioners request and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file; particularly that of the Department of Planning as follows:

“The Department of Planning has reviewed the petitioner’s request and accompanying site plan. The Department of Planning does not oppose the petitioner’s request for a non-conforming use provided, only two units are allowed. This condition shall be made part of any relief granted. Additionally, the Department of Planning does not oppose the requested variances for lot area, lot width and side yard setbacks.

Lastly, it has been confirmed via the community, that the site has been used as a semi-detached (multi-family) dwelling for many years.”

Testimony and evidence revealed that the subject property is 5,845 sq. ft. and is zoned DR 10.5.

Counsel for Petitioners proffered the testimony of Thomas J. Huff, a certified landscape Architect, who has previously testified in approximately 40 to 50 cases concerning landscape and zoning matters. Mr. Huff was accepted as an expert in landscape architecture and zoning.

The witness has been to and is familiar with the subject site. He would introduce the Plat to Accompany the Petition for a Special Hearing (Petitioners Exhibit #1) and photographs of the site (Petitioners Exhibit #2). It is his testimony that the subject property is a multi-family location containing two residences; based upon his investigation, has been so used since 1943.

Mr. Huff then addressed himself to the issues contained in § 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), specifically that the Special Hearing request would not be

detrimental to the health, safety or general welfare of the locality involved, as this residence has existed without any difficulties since 1943; that it does not tend to create congestion in roads, streets or alleys therein, as it has not done so since its inception; that it does not create a potential hazard from fire, panic or other danger, since no additional construction will be made or any other such issues created; it would not tend to overcrowd land and cause undue concentration of population, since the two family residence will continue to be used as such if the Special Hearing is granted; that it would not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, as there is no change in the use of the property at the present time than that which will be carried on if the Special Hearing is granted; that it will not interfere with adequate light and air, as the structure again will be unchanged from that which already exists; that it will not be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations, for the same reason; that it will not be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations, as no new construction or creation of impermeable surface will result from the granting of this Special Hearing; and will not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains, as this property is located in a DR zone and not in an RC zone.

The witness would have concluded his testimony by rendering his expert opinion that the subject property is a non-conforming use, existing and being used as such, without interruption, since prior to the imposition of Baltimore County Zoning Regulations.

Andrew Kulp would have testified that he is a licensed architect in Maryland, employed by Curry Architect and that he had received his degree in architecture from Auburn University. His

C.V. was admitted as Petitioners Exhibit #3 and he was accepted as an expert in architecture. Counsel proffered on his behalf that the witness would testify that he has been to the subject property, both inside and out. Based on the original construction techniques and details utilized in that construction, he rendered his expert opinion that the subject structure was originally designed and constructed to be a two family residence. The printout regarding the subject structure, noting that the property was built in 1903, was admitted into evidence as Petitioners Exhibit #4.

Counsel then proffered the testimony of Tony Kordell, the husband of the Petitioner. He would testify that they purchased the subject site in 2002, at which time it had two separate family residences. It has remained so up to the present time and is being sold to the Contract Purchaser who will continue to use it as such.

An Affidavit dated November 27, 2012 (Petitioners Exhibit #5) was submitted on behalf of Sadie Goldring, stating that she was born and has lived in the immediate area of the subject property since that time, and is familiar with the subject property. She states therein that at least since 1953 the subject site has been used continuously and without interruption as two distinct family dwellings, up to and including the present time. An Affidavit dated November 27, 2012 (Petitioners Exhibit #6) was submitted on behalf of Richard Goldring, setting out that he is familiar with the subject property and has lived in the immediate area since 1940; and that the subject site has been used continuously and without interruption as two distinct family dwellings, up to and including the present time. A final Affidavit dated February 18, 2013 (Petitioners Exhibit #7) was submitted on behalf of Adelaide C. Bentley, who has lived in the immediate area of the subject property all of her life. She is familiar with the subject structure and states therein that since 1953 the subject site has been used continuously and without interruption as two distinct family dwellings, up to and including the present time.

Upon the conclusion of counsel's proffer on behalf of the Petitioners, each witness for whom a proffer was presented was sworn and each individually adopted the proffer made on their behalf.

Based on the uncontroverted testimony and documents presented, I am convinced that the subject property was originally constructed to contain two separate family residences; and has been utilized as such continuously and uninterruptedly since its construction (and by Affidavit at least since 1953). Further, I am convinced by Mr. Hoff's expert testimony that the Petitioners request satisfies the requirements of Baltimore County Zoning Regulations § 502.1.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing request should be GRANTED.

THEREFORE, IT IS ORDERED, this 27<sup>th</sup> day of February, 2013 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 approve:

- (1) To allow the continuation of the non-conforming multi-family (semi-detached dwelling) use of the subject property containing:
  - (a) A lot width of 50 ft. in lieu of the required 80 ft.;
  - (b) A lot area of 4,845 sq. ft. in lieu of the required 8,050 sq. ft.;
  - (c) A minimum side yard of 8' in lieu of the required 15' (interior lot); and
  - (d) A minimum sum of side yards of 20' in lieu of the required 30' (interior lot).
  
- (2) To allow the continuation of the non-conforming multi-family (semi-detached dwelling) use of the subject property containing:
  - (a) A lot area of 4,845 sq. ft. in lieu of the required 6,000 sq. ft., and
  - (b) A minimum side yard of 8 ft. in lieu of the required 10 ft.

, be and is hereby **GRANTED**.

The relief granted herein shall be subject to and expressly conditioned upon the following:

1. Petitioners may apply for appropriate 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 to be responsible for returning, said property to its original condition.
2. The granting of this Special Hearing confirms the non-conforming use and permits its continued use for two residential units only.

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

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

LMS: sln