

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N side of George Street; 120 feet E of		
the c/l of Gregory Street	*	DEPUTY ZONING
1 st Election District		
1 st Councilmanic District	*	COMMISSIONER
(5622 Prince George Street)		
	*	FOR BALTIMORE COUNTY
Dawn Harris		
<i>Petitioner</i>	*	
Robert M. Alark		
<i>Legal Owner</i>	*	CASE NO. 2010-0062-SPH

* * * * *

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 Dawn Harris, who resides at 5625 Prince George Street. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the property located at 5622 Prince George Street to confirm the application of Section 409.6.A.1 of the B.C.Z.R. concerning the number of parking spaces for a conversion under Section 402 of the B.C.Z.R., which results in a minimum of 2 off-street parking spaces required per unit for a total of 4 parking spaces. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 6.

Appearing at the requisite public hearing in support of the requested special hearing was Petitioner Dawn Harris and her attorney Gretchen Graves, Esquire, who also resides at 5625 Prince George Street. The property owned by Ms. Harris is located directly across the street from the subject property. The legal owner of the subject property, Robert M. Alark, also appeared at the hearing, as did Deborah and Christopher Greenly, the tenants that also reside on the subject property. There were no other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and consists of approximately 11,600 square feet or 0.27 acre, more or less, zoned D.R.5.5. The property is located on the northeast side of Prince George Street near its intersection with Landington Avenue in the Gwynn Oak area of Baltimore County. The community where the property is located is situated north of U.S. 40 (Baltimore National Pike), east of Johnnycake Road and south of Ingleside Avenue. As depicted on the site plan and the SDAT real property data search printout that was marked and accepted into evidence as Petitioner's Exhibit 1 and the photographs that were marked and accepted into evidence as Petitioner's Exhibits 2, 11, and 22, the subject property is improved with an existing two-story block and frame dwelling built in 1938 and consisting of approximately 1,600 square feet. As shown on the "Conditional Use Permit for Two Apartments" that was marked and accepted into evidence as Petitioner's Exhibit 4, on November 13, 1995 then-Permits and Development Management Director Arnold Jablon approved the use of the property for two apartment units. The property owner, Mr. Alark, indicated he purchased the subject property as a two apartment dwelling in 1996 and has used the property as such continuously since that time. Mr. Alark also indicated he was not familiar with the specific off-street parking requirements contained in Section 409.6 of the B.C.Z.R. when he bought the property and has utilized the concrete parking pad at the southeast corner of the property for off-street parking. The parking pad is shown in the photographs that were marked and accepted into evidence as Petitioner's Exhibits 11, 28, and 29.

Ms. Graves proffered the testimony and evidence on behalf of herself and Ms. Harris, which revealed that Ms. Harris has owned her property at 5625 Prince George Street since 2005. Her property is located at the southwest intersection of Landington Avenue and Prince George Street, across the street from Mr. Alark's property. Ms. Graves characterized the area as a quiet

neighborhood in a country-like setting and described Prince George Street as a fairly narrow road without a great deal of travel other than by neighbors who live in the area. As shown on the map that was marked and accepted into evidence as Petitioner's Exhibit 21, the two streets near Prince George Street (Landington Avenue and Gregory Avenue) have very little on-street parking (no parking areas are delineated by red lines on the map). In fact, one of the only "open" areas of on-street parking is found along the frontage of Ms. Harris's property on Prince George Street.

This brings us to the main issue at hand in the instant matter. Over the last few years, on-street parking availability near Ms. Harris's property has been utilized primarily by Mr. Alark and his tenants from across the street. According to Ms. Graves, rather than utilizing the parking pad on the subject property, Mr. Alark and his tenants instead park on the street -- and because the closest on-street parking to the subject property is located in front of Ms. Harris's property, these vehicles, including a large pick up truck and a jeep, are continuously parked in front of her home. From her perspective, this is very unsightly and causes her to have almost no on-street parking in front of her home for her and her guests when the need arises. As a result, Ms. Graves investigated the parking requirements for the subject property and found that, because the dwelling consists of two apartment units, the Zoning Regulations require a minimum of 2 off-street parking spaces per unit, which in this case would amount to 4 off-street parking spaces required. As of the date of the filing for special hearing on or about August 21, 2009, Mr. Alark's property had only 2 off-street parking spaces (the concrete parking pad); hence, Petitioner Ms. Harris filed the instant Petition seeking a determination that the off-street parking requirements in Section 409.6.A.1 of the B.C.Z.R. applied to the subject property and require 4 off-street parking spaces. Although not requested in her Petition for Special Hearing, Petitioner

also seeks a determination as to whether Mr. Alark's property meets the requirements of the "Conversion of One-Family Dwellings" table contained in Section 402.2 of the B.C.Z.R. as to minimum lot area, lot width, and side yard setbacks. On the other hand, Mr. Alark believes his property does meet the requirements and that, in any event, this determination has previously been made in his favor and is now moot.

Mr. Alark explained that when he was made aware of the off-street parking requirements for his two apartment units, he took steps to comply. Indeed, since the instant Petition was filed, he has removed the grassy area between his property's mailboxes and the concrete parking pad, as well as the grassy area beyond the parking pad and replaced those areas with crushed gravel suitable for parking. Photographs of the parking pad extensions were previously accepted into evidence as Petitioner's Exhibits 28 and 29. This has resulted in the addition of at least two more off-street parking spaces on his property, thus bringing the property into compliance with the parking requirements of Section 409.6 of the B.C.Z.R.

Notwithstanding, Ms. Graves asserts that Mr. Alark's property is not in compliance with the aforementioned conversion table. She refers to the letter dated May 13, 2009 from Mr. Alark to Permits and Development Management Director Timothy M. Kotroco, a copy of which was marked and accepted into evidence as Petitioner's Exhibit 8, wherein Mr. Alark requested a Zoning Verification Letter for the property as a two apartment dwelling. Attached to the letter was a survey of the property from 1981 showing the relevant measurements of the property and dwelling related to size and setbacks. A copy of this survey, which is also utilized as the site plan in the instant matter, was previously accepted into evidence as Petitioner's Exhibit 6. In response, Mr. Alark received a letter dated May 15, 2009 from Bruno Rudaitis of the Zoning Review Office, which was marked and accepted into evidence as Petitioner's Exhibit 9. This

letter indicates that according to the County's assessment record, the subject property meets the lot width and lot area requirements for a converted dwelling, but he is unable to determine whether it meets the side yard setbacks for a duplex of 15 feet to the closest lot line and a sum total of 35 feet on both sides without a properly scaled location survey. As a result, Ms. Graves argues that the subject property is not in compliance with the conversion table requirements.

Mr. Alark disagrees and points to the location survey, which was sealed by a registered property line surveyor, James C. Hudgins, and indicates that the side yard setback closest to an interior lot line is 18 feet, with a sum total of approximately 56 feet. The undersigned also reviewed the Code Enforcement documents that were forwarded to the zoning file. These documents indicate a Code Enforcement Correction Notice was issued on February 19, 2009 for failing to obtain required permits for illegal conversion from a single family dwelling into two apartments.¹ These documents also included the notes from Inspector Grant Kidd indicating that on June 11, 2009, he spoke with Carl Richards, Zoning Supervisor at the Zoning Review Office. Their conversation indicated that Mr. Alark had a sealed approved site plan showing the lot meets all dimension requirements of the conversion table for the D.R.5.5 Zone. Hence, Mr. Kidd closed the Code Enforcement case. In Mr. Alark's view, he has complied with all the necessary requirements of the B.C.Z.R. for conversion of a dwelling to a two apartment duplex in the D.R.5.5 Zone, as well as the off-street parking requirements contained in Seciton 409.6 of the B.C.Z.R.

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.

¹ Case No. CO0056395

This is a difficult case because the crux of the matter appears to center mostly around Ms. Harris's and Ms. Graves' displeasure with the parking situation in front of their property, and the apparent unwillingness of Mr. Alark and his tenants to park their vehicles on the off-street parking pad on the subject property rather than on Prince George Street -- in front of Ms. Harris's property. Additionally, Ms. Harris and Ms. Graves request a determination that the off-street parking requirements of Section 409.6 of the B.C.Z.R. apply to the subject property and its use as a two apartment dwelling, as well as a determination that the property does not meet the conversion table, particularly as to the minimum side yard setback closest to an interior lot line, so the dwelling therefore cannot be used as two apartments.

There is generally no dispute that the property meets the minimum lot size and lot area requirements. And in my view, sufficient evidence has been adduced that the property meets the 15 foot side yard setback requirement as well. The sealed location survey that was accepted into evidence as Petitioner's Exhibit 6 shows a side yard setback of 18± feet. Moreover, Mr. Alark testified he measured the distance himself in May 2009 and found it was just under 19 feet. Ms. Graves argues that the width of the outside steps leading to a landing at the entrance to the second floor apartment -- a width of approximately four feet -- should be also be included in the calculation for the side yard setback. However, in my judgment, this stairway is not to be included in calculating the required setback distance. Therefore, based on the testimony and evidence presented at the hearing, I find that the subject property does meet the requirements of the "Conversion of One-Family Dwellings" table set forth in Section 402.2 of the B.C.Z.R.

I also find that the off-street parking requirements of Section 409.6 of the B.C.Z.R. apply to the subject property and its use as two apartment units. This section requires two off-street parking spaces for each unit, for a total of four parking spaces. However, this does not appear to

provide assistance to Ms. Harris or Ms. Graves because the evidence indicates that since the instant Petition was filed, Mr. Alark has provided the required additional off-street parking spaces. So in granting this aspect of Petitioner's relief, it is also moot because of the property owner Mr. Alark's compliance with Section 409.6 of the B.C.Z.R.

In conclusion, and particularly as to the on-street parking dispute, I would urge the parties to this case to have a more practical view of the parking situation on Prince George Street. Although I cannot force Mr. Alark and his tenants not to park in the street directly in front of Ms. Harris's home, I would hope there is some understanding on the part of Mr. Alark and his tenants not to constantly park on the street, especially when there is now sufficient off-street parking on their property. Unfortunately, such an ongoing impasse between neighbors engaging in potentially irritating, but otherwise lawful activity, can rarely be solved by this Commission.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 21st day of December, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to confirm the application of Section 409.6.A.1 of the B.C.Z.R. concerning the number of parking spaces for a conversion under Section 402 of the B.C.Z.R., which results in a minimum of 2 off-street parking spaces required per unit for a total of 4 parking spaces for the subject property located 5622 Prince George Street, be and is hereby **GRANTED**, and

IT IS FURTHER ORDERED that the subject property located at 5622 Prince George Street, which is improved with a two-story block and frame dwelling that has been converted

into two apartment units, meets the requirements of the “Conversion of One-Family Dwellings” table contained in Section 402.2 of the B.C.Z.R. as to minimum lot area (11,600 square feet), lot width (80 feet), and side yard setbacks (18 feet to the nearest interior lot line and sum of 56 feet) for a duplex in the D.R.5.5 Zone.

The relief granted herein is subject to the following:

1. The property owner may apply for any necessary building permit and be granted same upon receipt of this Order; however, the property owner and Petitioner are hereby made aware that proceeding at this time is at the property owner’s own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, the findings made herein are reversed, the property owner would be required to return, and be responsible for returning, said property to its original condition.

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