

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SE/Corner Brentwood & Fifth Avenues,		
N of Holabird Avenue	*	ZONING COMMISSIONER
(6701 Brentwood Avenue)		
12 th Election District	*	OF
7 th Council District		
	*	BALTIMORE COUNTY
Robert E. Rosso		
Petitioner	*	Case No. 2010-0168-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Robert E. Rosso, by and through his attorney, Deborah C. Dopkin, Esquire. The Petitioner requests a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

1. To amend the Plan and Zoning Order previously approved in Case No. 03-133-SPHXA, to affirm variances to the Residential Transition Area (RTA) parking requirements granted therein, to affirm prior setback relief for the existing building at 6701 Brentwood Avenue, and to amend the conditions of that Order referencing previously approved use;
2. To allow two (2) apartments in the existing building in conjunction with a church and accessory parking notwithstanding B.C.Z.R. Section 102.2;
3. To continue the use of Lots 7-13 Block A of the Fairlawn Subdivision as 31 spaces of business parking in a residential zone, together with all previously approved relief in support of the proposed use of the existing building at 6701 Brentwood Avenue;
4. To confirm that the business parking in a residential zone be allowed to continue without the need for an additional hearing as accessory to any future change use of 6701 Brentwood Avenue provided such use is permitted in the zone, and
5. To determine, pursuant to B.C.Z.R. Section 1B01.1.B.1.g(6), that the proposed church use is planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises.

The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Robert E. Rosso, property owner, and Richard E. Matz, P.E., with Colbert Matz Rosenfelt, Inc., the consultant who prepared the site plan for this property. The Petitioner was represented by Deborah C. Dopkin, Esquire. The sole property owner adjoining the building, Alleen V. Baker (6703 Brentwood Avenue), was in attendance as a concerned neighbor. There were no Protestants or other interested persons present. There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies, however, this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management and the Baltimore County Fire Department's Investigative Service Fire Inspection Report, dated July 2, 2009, relative to code violations for changes of the structure's use and fire code violations. (*See* Case No. 63327). Petitioner is seeking the instant approvals so he may apply for a building permit to make the improvements (most of which are interior or cosmetic) required by these violations.

Petitioner's counsel, in her opening remarks, identified the property as the former Brentwood Inn, and advised that though the petition sought only to affirm prior relief and change the use to permit the building to be used for church use and two (2) apartments, the case is complicated because of an apparent error on the Zoning Map for Baltimore County. In particular, the portion of the property containing the building improvements has historically enjoyed a B.L. zoning designation; however, at some time after the most recent zoning hearing in 2003, the designation for that part of the property was inadvertently changed on the official zoning map to D.R.5.5, notwithstanding the fact that there was no process, either through the Comprehensive Zoning Map Process (C.Z.M.P.) process or by petition, by which the re-designation was authorized. Accordingly, a request has been made to the Director of Planning to

initiate the map correction process pursuant to Baltimore County Code (B.C.C.) Section 32-3-231, *et seq.* Mrs. Dopkin stated that the petition asks for relief under the D.R. provisions since the official map is controlling. She then entered the official 2008 Zoning Map as Petitioner's Exhibit 2, and a letter dated November 23, 2009 from Richard Matz to Pat Keller calling for a map correction as Petitioner's Exhibit 3.

Petitioner's counsel next offered Richard E. Matz, a registered professional engineer, accepted as an expert and had him introduce the site plan. Testimony and evidence offered revealed that the subject property consists of two (2) parcels: the triangular shaped parcel on which the building is located, and the parking parcel, lying across Fifth Avenue. He also noted that the property is bifurcated by the City/County line, and a small portion of each property lies in Baltimore City. The property is served by public utilities and transportation, and lies in close proximity to both Dundalk Avenue and Holabird Avenue, which are major thoroughfares.

Mr. Matz then identified each item of relief requested, relating each to relevant prior zoning cases, which, in summary, allowed the use of the building as a boarding house, subsequently as a community building, and further permitted parking on the lot (which lies in a residence zone), and granting exceptions to the RTA requirements for the parking lot. Mr. Matz introduced the two (2) most recent cases, Case No. 03-133-SPHA and Case No. 02-027-SPHA, as Petitioner's Exhibits 4 and 5, respectively.

Mr. Matz pointed out that the property lies between the commercial uses on both Dundalk and Holabird Avenues, and the residential community on Brentwood and Fifth Avenues. The parking lot is served by a private alley and is bordered on the south by the rear yards of the businesses on Holabird Avenue. The building, on the other side of Fifth Avenue, occupies the entire lot on which it sits, and can best be described as a "hodgepodge" resulting

from additions and conversions of the original residence, built in 1929. Petitioner introduced the Maryland Department of Assessments and Taxation (SDAT) data sheet documenting the age of the building as Petitioner's Exhibit 6. Mr. Matz also used historic photographs to show the prior use as a restaurant, featuring a noted wine cellar, which was introduced as Petitioner's Exhibit 7. Current photographs (Petitioner's Exhibit 8) and aerial photographs (Petitioner's Exhibit 9) were introduced to show the current state of the building and parking area, adjoining and nearby uses, both residential and commercial.

Mr. Matz explained that the building is not currently being used because of the violation Order, and that proposed uses as a church and two (2) residential units, are permitted as of right, both in the D.R. zone, and in the B.L. zone, pointing out that the petitioned relief seeks application prospectively if the B.L. zone is restored. Based on the D.R. designation, RTA relief – which would not be required under a B.L. designation - is being sought for the building and affirmed for the parking lot. No exterior alterations are proposed other than cosmetic improvements and those necessary to achieve compliance. Mr. Matz introduced the Fire Inspection Report as Petitioner's Exhibit 10, enumerating the corrective actions that need to be taken. Petitioner has hired an architect to prepare drawings to accomplish these changes, which drawings were introduced as Petitioner's Exhibit 11, and show the use of the lower floors as church and assembly halls, and the upper floor (in the area of the original building) as two (2) single-family apartments. Mr. Matz stressed the need for approval of the subject petition as a prerequisite to obtaining a building permit.

Mr. Matz noted that the parking area has approximately 31 spaces on the portion lying in Baltimore County, and a few more available on the portion lying in Baltimore City. There is no need for a variance of the number of spaces, which in total exceed those required under the

B.C.Z.R. The lot has two (2) street entrances providing circulation and easy ingress and egress, as well as access to the alley which leads directly to Brentwood Avenue just west of its intersection with Fifth Avenue. Mr. Matz indicated that the only residence that adjoins the parking lot actually parks on the lot, with Petitioner's consent, in exchange for maintaining the landscaped area between his house and the parking surface.

Mr. Matz noted that there were no adverse Zoning Advisory Committee (ZAC) comments, though the Planning Office, while recommending approval, conditioned that approval on improvement of the parking lot.

Upon questioning from Petitioner's counsel, Mr. Matz stated that in his opinion the relief, if granted would not be detrimental to the health, safety or general welfare of the locality, and would otherwise satisfy the criteria of Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). Explaining his conclusion, Mr. Matz stated that having a residential presence in the building was better for the safety both of the community and the building, particularly in light of the fact that the building has been vandalized twice since shut down by the County. Further, that since the church meets primarily on Sundays and on one or two weeknights, the church hours of peak use do not ordinarily conflict with residential uses. If the building is income producing, it will enable the owner to better maintain it and the parking area.

Petitioner's counsel next called on Mr. Rosso, who stated that he has owned the building since 2000. The title deed was entered as Petitioner's Exhibit 13. At the time he acquired the building it was vacant, after having been used for a variety of commercial and office purposes. Mr. Rosso indicated that he has leases with the two (2) churches who share the use of the building, but that the leases were in jeopardy as a result of the building having been shut down. Mr. Rosso stated that his intention is to limit the occupancy of the apartments to one family in

each of the two (2) apartments. Mr. Rosso also stated that since the violation case, he has attempted to make minor corrections to the extent these do not require a building permit, but can proceed no further until the subject relief is granted so he can obtain permits.

Prior to closing Petitioner's case, Petitioner's counsel introduced copies of all prior zoning cases, some as early as 1941, into the record.¹

Mrs. Baker, who has resided next to the improvements known as 6701 Brentwood Avenue for 24 years, did not have any questions for either Mr. Matz or Mr. Rosso. She did however express her frustration with Mr. Rosso and the occupants of the building. In particular, church attendees who park on the street have blocked the driveway to Mrs. Baker's property and have at times been unpleasant when she asked them to move their cars. In addition, Mrs. Baker was concerned because she believes that Mr. Rosso exceeded the number of boarding house occupants permitted under prior zoning relief. She expressed frustration that Mr. Rosso fails to communicate with her when people work on the building and trespass on her property when doing so. Trash on the street and an overflowing dumpster on the parking lot have also created a problem in the area. The level of Mrs. Baker's frustration was palpable, even though she has not pursued these matters with the Division of Code Inspections and Enforcement, preferring to deal directly with the property owner.

Based upon testimony and evidence offered, I find that despite the problematic nature of the case, Petitioner has satisfied the requirements of Section 502.1 of the B.C.Z.R., and that without the requested relief, the situation cannot be remedied. Even so, any relief granted today must be limited in scope and conditioned on the Petitioner maintaining the building in a proper

¹ Cases were numbered as follows: 0205 (1941), 0355 (1944), 3400 (1955), 4465-RX (1958) and 01-088-SPHA.

manner and use. The property's history, location and building configuration render the property a difficult one to adapt to a viable ongoing use.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the following relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of January 2010, that the Petition for Special Hearing, filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking relief as follows:

1. To amend the Plan and Zoning Order previously approved in Case No. 03-133-SPHXA, to affirm variances to the Residential Transition Area (RTA) parking requirements granted therein, to affirm prior setback relief for the existing building at 6701 Brentwood Avenue, and to amend the conditions of that Order referencing previously approved use;
2. To allow two (2) apartments in the existing building in conjunction with a church and accessory parking notwithstanding B.C.Z.R. Section 102.2;
3. To continue the use of Lots 7-13 Block A of the Fairlawn Subdivision as 31 spaces of business parking in a residential zone, together with all previously approved relief in support of the proposed use of the existing building at 6701 Brentwood Avenue;
4. To confirm that the business parking in a residential zone be allowed to continue without the need for an additional hearing as accessory to any future change use of 6701 Brentwood Avenue provided such use is permitted in the zone, and
5. To determine, pursuant to B.C.Z.R. Section 1B01.1.B.1.g(6), that the proposed church use is planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises.

be and is hereby GRANTED subject to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for his permit(s) and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. That the Petitioner brings the building into compliance with applicable building and fire safety codes and thereafter keeps the property in good order and repair and free of trash.
3. That no more than two (2) single-family apartments be permitted, and each must be occupied by one (1) family as defined in the Baltimore County Zoning Regulations (B.C.Z.R.).
4. That within 12 months from the date hereof, Petitioner shall amend his site plan (Exhibit 1) in accordance with Stephen Weber's comments, dated 1/19/10, concerning the two (2) access points onto Fifth Avenue and improve the parking lot in accordance with the recommendation of the Office of Planning, dated 1/6/10. Copies of these comments are attached hereto and made a part hereof.
5. No vehicles larger in size than a three-quarter ton pickup truck may be stored or kept overnight on the adjacent property across Fifth Avenue and no vehicles in a damaged or disabled state may be stored or allowed to remain on the property for more than forty-eight (48) hours.
6. The Petitioner shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management reasonable access to the building and apartments on the subject property to insure compliance with this Order.
7. These conditions are intended to bind the Petitioner and his successors and assigns. Accordingly, Petitioner, through Counsel, shall place in any Deed of Conveyance a reference to this case number and these restrictions.
8. When applying for any permits, the site plan and/or landscape plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County