

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SW side of Saint Marys Avenue, 320' SE of		
c/line of Gregory Avenue	*	OFFICE OF
1 st Election District		
1 st Councilmanic District	*	ADMINISTRATIVE HEARINGS
(5603 Saint Marys Avenue)	*	FOR BALTIMORE COUNTY
Michael J. Rinehart	*	CASE NO. 2012-0029-SPH
<i>Petitioner</i>	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Special Hearing filed by Michael J. Rinehart, legal owner. Petitioner is requesting Special Hearing relief from Section 500.7 the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the non-conforming use of two dwellings on one property. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Michael J. Rinehart, the legal owner. A review of 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 Protestants or other interested persons in attendance at the hearing, and the file does not contain any letters of protest or opposition.

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 Enforcement and Inspection Citation was issued to the Petitioner on March 23, 2011, for failure to remove one of the dwelling units from the property and failure to apply for a special hearing for a nonconforming use in order to allow the two dwelling units. In addition on May 17, 2011,

¹ Case No: CO-0086602

Petitioner came before me, for a code hearing (Civil Citation No. 86602) for violations under B.C.Z.R. Section 102.1. The \$3,000.00 civil penalty was suspended in full with the understanding that Petitioner would file this petition within 30 days to establish the legal nonconforming use; failure to do so would result in the imposition of the entire fine. Hence, Petitioner filed the instant special hearing request for a nonconforming use.

Testimony and evidence offered revealed that the subject property is 8,000 square feet and is zoned DR5.5. The property is improved with 2 separate dwelling units. One house sits closer to St. Mary's Street and the second dwelling sits to the rear of the property. That dwelling has been further divided into 2 Apartment units, causing a total of 3 dwelling units on this one property. Both houses are very old and were built prior to 1945. They each have separate electric meters and have always been occupied as dwellings.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

As with all nonconforming use cases, the burden is on the Petitioner to produce evidence that a legal nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations rendered it an unpermitted use. The controlling year in this case for 2 dwelling units is 1955. The evaluation of nonconformity must include a determination of whether there has been a change in the use of the subject property, breaking the continued nature of the nonconforming use. If the use of the subject property has changed to a different use, the current use

of the property cannot be considered as nonconforming. *See*, B.C.Z.R. Section 104; *McKemy v. Baltimore County, Maryland*, 39 Md. App. 257 (1978).

The applicant provided 2 affidavits from citizens which indicated that there has existed 2 separate dwelling units on the subject property since 1945 to the present time. The evidence is unclear and does not support the further subdivision of the rear dwelling into 2 separate apartments. Therefore I cannot approve 3 dwelling units on this property; I can and will approve 2, as the evidence is sufficient in that regard. The applicant will have to eliminate one of the units.

Based upon the testimony and evidence presented, I am persuaded to GRANT the request for special hearing relief.

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

THEREFORE, IT IS ORDERED this ___8th___ day of December, 2011 by this Administrative Law Judge that Petitioner's Special Hearing request from the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the non-conforming use of two dwellings on one property, be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The applicant shall eliminate one of the 3 dwelling units, reducing the total number of units on the property to 2. This shall be done within 90 days from the date of this order.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/sma