

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(2907 Hillcrest Avenue)		
9 th Election District	*	OFFICE OF ADMINISTRATIVE
5 th Councilmanic District		
2907 Hillcrest Avenue, LLC	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0222-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by David Preller, Jr., Esq., on behalf of 2907 Hillcrest Avenue, LLC, legal owner. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 2 unit apartment that existed since 1981. 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 Todd Sachs and Rick Richardson, an engineer whose firm assisted the Petitioner. David Preller, Jr., Esq. appeared as counsel and represented the Petitioner. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The only Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) which indicated it did not object to the petition.

Testimony and evidence revealed that the subject property is approximately 9,375 sf. and is zoned DR 5.5. Mr. Sachs purchased the property in 2008, and he indicated that the listing for

the property and the appraisal both indicated it was a 2 unit dwelling. Exhibits 2 and 3. Mr. Sachs testified that Baltimore Gas and Electric (BGE) records reflected that since at least 1981, the property was served with 2 electric and gas meters. The Petitioner indicated that only 1 family currently resides in the dwelling, and that he would only seek a tenant for the upstairs apartment unit after obtaining zoning relief and the rental inspection and license required by Baltimore County.

Mr. Richardson, a professional engineer who was accepted as an expert, testified via proffer that he visited the property and took numerous photographs. See Exhibit 5. Mr. Richardson noted that there are dual BGE meters and fixtures/doors throughout the dwelling that effectively divide the home into two apartment units: 1 upstairs, and 1 downstairs. Mr. Richardson opined, based on the style of the interior furnishings, doorways, upstairs kitchen and related fixtures, as well as the exterior stairway providing for direct access to the second floor unit, that the home had been divided or converted into two apartment units since at least 1981, and probably since the house was constructed in 1928.

As I noted at the hearing, I am somewhat baffled by the wording of the petition, which the Petitioner indicated was prepared by County zoning staff. Specifically, I do not know why the 1981 date was selected; the law pertaining to conversion of single family dwellings was enacted in 1955, B.C.Z.R. §402. Since that time, the minimum lot size in a DR 5.5 zone (formerly R.6) is 10,000 sq. ft., which Petitioner does not satisfy; the lot is 9,375 sq. ft. Even so, I concur with Mr. Richardson's testimony that this house was in fact designed and constructed as a "duplex," (meaning individual family units placed one over the other). Since - - based on the testimony and photographs - - I believe the "duplex" arrangement existed since at least 1955, the Petitioner would enjoy nonconforming use status.

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 19th day of July, 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 permit a 2 unit apartment that existed since 1981, be and is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and/or licenses 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 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.
- Petitioner shall obtain all licenses and inspections required by Baltimore County before rental of the second (upstairs) apartment.

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:sln