

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(9616 Mason Avenue)</b>		
9 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Council District		
Chris A. Owens & Francis J. Koerner, Sr.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Petitioners	*	FOR BALTIMORE COUNTY
	*	<b>Case No. 2017-0307-SPH</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Chris A. owns & Francis J. Koerner, Sr., legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve as a non-conforming use the property for use as a two family dwelling (existing) and a single family dwelling (existing), for a total of three rental units (existing).

Francis Koerner and Mitch Kellman appeared in support of the petition. C. William Clark, Esq. represented the Petitioners. Several community members attended the hearing and opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The subject property is approximately 0.165 acres (7,920 sq. ft.) in size and zoned D.R. 5.5. The property is improved with a dwelling constructed in 1945. Petitioners contend this dwelling has been used since at least 1970 as a two unit apartment, and is a nonconforming use/building. In addition, there is a second structure at the rear of the lot, although it is not clear

when this building was constructed. Petitioners contend this second building has been used since 1970 as a single family dwelling and is a lawful and nonconforming use/structure.

It is clear Petitioners cannot satisfy current requirements for “conversion” of single family dwellings. B.C.Z.R. §402.1. That section requires 10,000 sq. ft. of lot area for two families, and 13,000 sq. ft. for three families. As such, the three family use can only continue if Petitioners establish it is protected as a lawful nonconforming use per B.C.Z.R. §104.

Mr. Kellman testified that prior to the enactment of Bill 100-1970, two dwellings could be erected on a single lot and two families could live in one dwelling. The witness reviewed the zoning history for the property and testified that in 1945 the site was zoned “A” Residential. Petitioners submitted a copy of the pertinent 1945-1955 Zoning Regulations which indicate both single family and two-family dwellings were permitted on one property. Ex. 10, at K:7. Thus, 1970 is the operative date and Petitioners must establish the main dwelling was used for two families and the rear dwelling was used for one family prior to that date, and in an uninterrupted fashion since then.

Mr. Koerner testified he purchased the property in 2005 and that all existing improvements were on the lot at that time. He noted the “main” house has separate entrances for upstairs and basement apartments, and a permanent wall separates those living units. He stated the rear house also has a separate entrance and all housekeeping and kitchen facilities. The witness in or about 2011 registered the three rental units with Baltimore County’s Rental Registration Program. Exhibit 4. Concerning the use of the property prior to his ownership the witness indicated a gentleman named Ron (now deceased) who lived at 9614 Mason Avenue told him the properties were always rented by three separate individuals/families. He also testified James Krausman (an

elderly gentlemen who resides at 9620 Mason Avenue) told him he has lived at this location for 48 years and that during that time the property was rented by three individuals/families.

The next witness was Mitch Kellman, a zoning and land use planner accepted as an expert. In addition to the testimony summarized above, Mr. Kellman presented a 1955 zoning map (using 1953 photography) which he said shows two structures existed on the lot at that time. Exhibit 9. The witness visited the property and reviewed all relevant deeds, plans and pertinent regulations. Based on those materials, and the testimony of Mr. Koerner, he opined all three units are lawful nonconforming uses/structures.

Neighbors opposed the request and stated the property does not have sufficient parking and that a three apartment use is inappropriate for this area of single family homes. Joe Dembeck, who has lived directly across the street from the subject property since 1992, testified that there is only one mailbox at the property. He also testified that the property was used as three units only by the former owner and her daughter (Mary Hitchens and Sharen Favre) who sold the house to Petitioners in 2005. Since that time the witness stated the property has not been used or rented on a continual basis by three different individuals/families.

Based on the testimony and exhibits presented I do not believe Petitioners have presented sufficient proof that the main dwelling on the lot was used since 1970 as a two-family dwelling. While there was testimony concerning a wall separating the units, no photographs were presented of the units themselves or the interior of the home. And while hearsay is admissible in administrative hearings, the only evidence presented to establish the two-family use existed prior to 1970 were statements attributed to a current and former (now deceased) neighbor. This is insufficient to establish the use as lawfully nonconforming. *Board of Zoning Appeals v. Meyer*, 207 Md. 389 (1955).

On the other hand, I am persuaded by Mr. Kellman's testimony that the rear dwelling is a lawful, nonconforming use/structure. He described his visit to the site and presented a photograph of that structure. Ex. 3D. He noted it had a door, windows, chimney and residential style roofline, none of which are routinely found on a garage or other accessory building. He also identified the structure on a 1955 zoning map, and thus I believe the building was constructed at or about the time of the main dwelling in 1945, at which time two single-family dwellings could lawfully be constructed on one lot. And Mr. Dembeck recalled being in the rear dwelling through the years when it was rented to tenants. Thus I believe Petitioners have established the rear building qualifies as a lawful nonconforming use/structure which can continue to be used as a single family dwelling. *Purich v. Draper Props., Inc.*, 395 Md. 694, 708-09 (2006).

THEREFORE, IT IS ORDERED this 31<sup>st</sup> day of **August, 2017** by this Administrative Law Judge, that the Petition for Special Hearing to approve as a nonconforming use the property for use as a two family dwelling (existing) and a single family dwelling (existing), for a total of three rental units (existing), be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve two single family dwellings on one lot as a lawful nonconforming use, for a total of two rental units, be and is hereby GRANTED.

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

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln