

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(5701 Edmondson Avenue)		
1 st Election District	*	OFFICE OF
1 st Council District		
5700 Edmondson, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0304-SPH

* * * * *

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 5700 Edmondson, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the nonconforming use of a 2-unit dwelling since 1945. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Josh Willet and professional engineer Rich Richardson appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request.

The subject property is 3,023 square feet in size and zoned DR-10.5. The property is improved with an end-of-group townhome constructed in 1942. Petitioner purchased the home this year from the original owner’s estate. The dwelling has two living units or apartments, accessed through separate exterior entrance doors. In the 1955 zoning regulations, this was referred to as a “two-family dwelling,” which was defined as having “one housekeeping unit over the other.” BCZR (1955) §101.

Generally speaking, a nonconforming use is one that was operating lawfully as of the date zoning regulations were first adopted which rendered the use non-permitted. *Howard County v. Meyer*, 207 Md. 389 (1955). The BCZR defines a nonconforming use as “[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use.” BCZR §101.1. Petitioner presented a series of photographs showing the electrical and HVAC units in the basement of the home which service both living units. Pet. Ex. No. 5. In addition, the original owner’s nephew submitted an affidavit stating the structure has been used as a two-unit dwelling since its construction in 1942. Pet. Ex. No. 4. As such the petition for special hearing will be granted.

The DOP submitted a ZAC comment which included three proposed conditions for inclusion in the final order. I believe proposed condition numbers 2 & 3 are appropriate and will be included below. The first condition, however, would require Petitioner to repair all “broken walkways.” Mr. Willet stated that the walkway located on his property (i.e., leading to the front door of the home) is in good condition, although the sidewalk adjoining the public road is in need of repair in a few places. Under the County Code, only the Department of Public Works (“DPW”) can order a resident to repair a sidewalk adjacent to his home, and the owner is entitled to appeal that order to the County Executive or his designee. BCC §18-3-304. As such, I will not include the first condition in the order below, and if DPW believes the sidewalk needs to be repaired it must follow the procedure set forth in the County Code.

THEREFORE, IT IS ORDERED this 5th day of **July, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to approve the nonconforming use of a 2-unit dwelling since 1945, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with proposed condition numbers 2 and 3 in the DOP ZAC comment, a copy of which is attached hereto and made a part hereof.

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