

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(7004 & 7006 Railway Avenue)		
12 th Election District	*	OFFICE OF
7 th Council District		
Estate of Robert L. Martin &	*	ADMINISTRATIVE HEARINGS
Christine Martin, PR, <i>Legal Owners</i>		
Alpha Homes, LLC.	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	Case No. 2019-0023-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 the Estate of Robert L. Martin, legal owner and Alpha Homes, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the continuance of the non-conforming use of the subject property as a 2 dwelling unit building and to continue the non-conforming use of the accessory structure in the rear of 7004 Railway Avenue as a 2 dwelling unit building. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Christine Martin and Henry Valasquez appeared in support of the petition. W. Timothy Sutton, Esq. represented Petitioners. Several neighbors attended the hearing to express concerns with the operation of a bar at an adjoining property, which was the subject of Case No. 2019-0022-SPH, a companion case heard at the same time as the present matter. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (“DOP”). That agency did not object to the request.

The subject property is 6,250 square feet in size and zoned DR-5.5. The property is improved with a 2-story dwelling known as 7004/7006 Railway Avenue, and a 2-story masonry structure in the rear of the lot identified as 7004A & 7004B Railway Avenue. Christine Martin,

personal representative of the estate of Robert L. Martin, testified that each of these structures contains two separate living units or apartments, for a total of four (4) units. The Petitioners seek a declaration that this is a lawful nonconforming use, as that term is defined in Sections 101.1 & 104 of the BCZR.

Ms. Martin testified three of the units (i.e., 7004, 7006 and 7004A Railway Avenue) are registered with Baltimore County's rental registration program, although she did not present copies of any licenses or registration documents. She testified the fourth unit is vacant and is therefore not registered with the County. She also indicated she had at her home copies of leases, utility records, etc. pertaining to the alleged status of these properties as a lawful nonconforming use.

As indicated in the companion case involving the bar (Case No. 2019-0022-SPH), the burden of proving the existence of a lawful nonconforming use falls upon the party asserting that claim. *County Comm'rs of Carroll County v. Uhler*, 78 Md. App. 140 (1989). Nonconforming uses are disfavored and the goal of zoning is to eliminate nonconforming uses through "economic attrition and physical obsolescence." *Prince George's County v. E.L. Gardner, Inc.*, 293 Md. 259, 268 (1982). I do not believe Petitioners have presented sufficient evidence and/or testimony to establish that the subject property and the structures thereon have since 1955 (which is when Baltimore County first adopted zoning regulations) been continuously used as a 4-unit apartment complex. Ms. Martin in fact testified only three of the units are occupied at this time, which I believe requires the denial of the petition as a matter of law.

THEREFORE, IT IS ORDERED this 1st day of **October, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to approve the continuance of the non-conforming use of the subject property as a 2-dwelling unit building and to continue the non-conforming use of the accessory structure in the rear of 7004 Railway Avenue as a 2-dwelling unit building, be and

is hereby DENIED.

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