

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(248 Clyde Avenue)		
13 th Election District	*	OFFICE OF
1 st Council District		
Shrevus Panchigar	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0207-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Shrevus Panchigar (“Mr. Panchigar”) for the property known as 248 Clyde Avenue in the Halethorpe area (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to permit a non-conforming use of a second residence unit in the existing detached garage.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Mr. Panchigar appeared along with Patrick Richardson, Jr., P.E. who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1).

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and from Department of Environmental Protection and Sustainability (“DEPS”). Those agencies did not oppose the requested relief, subject to proof of non-conforming use status. People’s Counsel opposed the requested relief in a letter dated September 20, 2020.

The Property is approximately .20 acres and is zoned DR 5.5. According to the SDAT records, the home was built in 1900. An aerial photo of the Property provided by People’s Counsel shows a home and a garage. The rental space at issue here is the second floor of the garage. No evidence was presented as to the date when the garage was constructed. The garage does not have

a separate address.

By way of background, Mr. Panchigar is an established businessman in the Lansdowne area. He testified that one of his employees, Ruth Ann Healey, who owned the Property between May 22, 2015 and August 5, 2020, had financial problems and needed to sell it. To assist her financially, Mr. Panchigar bought the Property in August of 2020. Mr. Panchigar does not live there. He applied for two (2) rental licenses - one for the home and one for the garage. Although it was not produced at the hearing, he testified that the County gave him a rental license for the home, but not for the garage. Mr. Panchigar added that he is renting the home to a tenant who signed a lease.

Mr. Panchigar testified that Ms. Healey told him that she was born in 1958 or 1959 in the house next door (246 Clyde Ave). She also told him that, at some point, her parents bought the Property and that they told her that the garage was rented. The SDAT record indicates that Charles Michael Healey (who is apparently Ms. Healey's ex-husband) owned the Property between July 21, 1988 and May 22, 2015. Prior to that, the SDAT record indicates that Darryl Malecki owned the Property. No deeds were produced at the hearing.

Approximately three (3) years ago, a Code Violation Correction Notice dated November 22, 2017 was issued to Ms. Healey for failure to have a rental license. According to the Notice, the violation was for 248 Clyde Avenue which is the address for the home. According to Mr. Panchigar, Ms. Healey previously lived in the home; she did not rent it.

With regard to the garage, Mr. Panchigar testified Ms. Healey told him that a tenant named David Beckner ("Mr. Beckner") has been living in the second floor of the garage for 15 years. Despite the length of this tenancy, no written lease between Ms. Healey and Mr. Beckner was produced at the hearing and/or does not exist. There is no separate BGE or electric meter and no

separate cable bill for the garage. It was Mr. Panchigar's understanding that Mr. Beckner pays one lump sum for rent, electricity and cable. It is unclear how a tenant in the garage would receive mail or deliveries as there is only one (1) address for the Property.

To meet the burden of proof for a non-conforming use, Mr. Panchigar produced three (3) Affidavits wherein individuals affirmed that, at various times, the home located at 248 Clyde Avenue has been occupied by renters as a 2-apartment dwelling every year. (Pet. Ex. 2). Each of the Affidavits was notarized on November 24, 2020 by Mr. Panchigar. (Mr. Richardson represented that it was difficult to obtain a notary during the Covid pandemic). None of the Affidavits mention rental of the garage.

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). A valid and lawful nonconforming use is established if the owner can demonstrate that *before and at the time* of the adoption of a new zoning classification/ordinance, the property was being used in a lawful manner that, by later legislation, became non-permitted. *Trip Assoc., Inc. v. Mayor and City Council of Baltimore*, 392 Md. 563, 569 (2006).

In Baltimore County, the law regarding nonconforming uses is set forth in BCZR, §104.1, provides:

A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to

continue or resume such nonconforming use shall terminate.

The definition of non-conforming use in BCZR, §101.1 is:

NONCONFORMING USE — 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. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

The two questions to be resolved in this case are: (1) Whether or not the use of the Property existed prior to the inception of a zoning regulation prohibiting that use; and (2) If so, whether that use continued uninterrupted and was not abandoned or discontinued for a period of one year or more. As to the first, the specific issue is the date when the zoning regulation prohibited two (2) dwellings on one lot in the DR 5.5 zone. I find that the applicable year is 1971 when the countywide zoning map reclassified the Property from the R.6 zone to DR 5.5. (Bill 100-70). Prior to 1971, both the 1945 and 1955 BCZR permitted two-family dwellings in the R.6 zone. Importantly, there was no limitation in either of those earlier regulations of only one structure on the Property.

Having determined that the zoning regulations of 1971 pertaining to the DR 5.5 zone is operative here, the Petitioner's greater problem is establishing that the nonconforming use of that garage unit existed before and after 1971 uninterrupted and continuously up to the hearing date. Here, Mr. Panchigar does not have personal knowledge or other documentary evidence about the nonconforming use before 1971. While Mr. Panchigar was accurately testifying about information provided to him by Ms. Healey, his testimony is uncorroborated. The Affidavit of Ms. Healey, was the only evidence presented regarding the time period before 1971. However, it failed to address the garage as a rental unit. Additionally, there was no supporting documentary evidence

from Ms. Healey's ownership, or from the prior owners, that the garage was used as a rental unit before and after 1971 including, without limitation: no leases, no BGE/electric statements, no telephone bills, no cable bills, no repair bills or other expense reports, and no tax returns showing rental income and expenses. Given the span of 49 years, the burden of proof on the Petitioner here is not insignificant. Accordingly, I find that there has not been sufficient evidence by Affidavit or testimony to establish that the garage has, before and after 1971, been used as a second rental unit.

Another problem arises from Ms. Healey's Affidavit in that she certified she would not realize a gain from the sale of Property. Yet, she clearly sold the Property to Mr. Panchigar with an open Code Violation dating back to November 22, 2017, for failure to obtain a rental license. According to People's Counsel's letter, as of October 20, 2020, there were no rental licenses issued for the Property, much less the garage. The regulations requiring a rental license went into effect on February 3, 2008 (Bill 87-07). Therefore, assuming *arguendo* that the garage was being rented continuously before and after 1971, on February 3, 2008 the garage unit became illegal because it did not have a rental license. As a result, the garage unit, by definition, has not been a 'legal use' under BCZR, §101.1 for approximately 12 years.

Finally, even assuming for the sake of argument that the use was 'nonconforming', the evidence was also deficient on the issue of whether or not there has been an abandonment or discontinuance of the nonconforming use for more than 1 year under BCZR, §101.1. As set out above, the burden is upon a petitioner to prove that there was no fatal interruption in the nonconforming use and that burden has not been met.

THEREFORE, IT IS ORDERED this **22nd** day of **December, 2020** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from the BCZR § 500.7 to permit

a non-conforming use of a second residence unit in the existing detached garage is and hereby DENIED.

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

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm