

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(215 Patapsco Avenue)</b>		
15 <sup>th</sup> Election District	*	OFFICE OF
7 <sup>th</sup> Council District		
Thomas & Patricia Eltringham	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
<b>Petitioners</b>	*	<b>Case No. 2020-0109-SPH</b>

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**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 Thomas W. Eltringham and Patricia R. Eltringham, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) for a non-conforming use of a 4-unit dwelling and 4 rooming rooms.

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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Joyce Eltringham, daughter of the Petitioners, appeared in support of the petition. John Gontrum represented the Petitioners. There were no protestants or interested persons in attendance. A Substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”), which opposes the requested relief.

The subject property is approximately 2000 square feet in size and is zoned DR 5.5. It is located in the St. Helena section of Dundalk, which Mr. Gontrum explained is one of the oldest communities on the east side. The record plat for this property is dated 1892 and is in the first County plat book. Mr. Gontrum proffered that Perry Darby purchased the property from his parents

in 1933. Darby and his sister owned numerous multi-family and rooming house rental properties in the neighborhood. The residence on the site was built in 1936 as a four unit rental. Neither Darby nor his sister ever lived there. When the zoning regulations were first adopted in 1945 the property was zoned “D-residential,” which allowed this multi-family rental use. Mr. Gontrum explained that there were many similar rental units in the neighborhood that housed an influx of workers during World War II. The property first became non-conforming in 1955 when it was re-zoned R6, which was the predecessor to the current DR 5.5 zoning classification. Mr. Gontrum introduced affidavits showing that the property has been continuously used as a four unit rental since at least 1967. Further, there is no evidence to suggest that between 1955 and 1967 that this usage ever lapsed. The floor plan and exterior doors show that it has been maintained as four separate apartments since it was built.<sup>1</sup>

Under Maryland law, a non-conforming use is a vested right entitled to constitutional protections. *Purich v. Draper Properties, Inc.*, 395 Md. 694, 708-09 (2006). BCZR § 104.1 acknowledges these constitutional protections and allows non-conforming uses to continue provided that they have never been converted to any other use, or abandoned for a year or more. Based on the testimony and exhibits I find that the property in question has been continuously used as a four unit rental property since it was constructed in 1936. The Petition must therefore be granted.

THEREFORE, IT IS ORDERED this 6<sup>th</sup> day of **October, 2020** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief under § 500.7 of the Baltimore

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<sup>1</sup> There was some evidence introduced at the hearing to indicate that there has been a separate fifth unit in the basement for some time. However, the Special Hearing Petition seeks a finding of non-conforming use only for the four upstairs units, and due to the DOP’s concerns regarding parking and compatibility I will limit the relief granted to that which was formally requested.

County Zoning Regulations (“BCZR”) for a non-conforming use of a 4-unit dwelling and 4 rooming rooms, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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 their 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.
- Prior to the issuance of permits the Petitioner shall submit proof that they have registered and are in good standing with the Baltimore County rental registry.
- Prior to the issuance of permits the Petitioner shall submit for approval a site and landscape plan providing a minimum of three (3) parking spaces in the rear of the residence.

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

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Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlm