

86-98 SPH PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto, made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve a second living unit in a single family home for the purpose of allowing Mother-in-law to have a non-kosher kitchen.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):

(Type or Print Name) Martin Kalmar

Signature Martin Kalmar

Address

City and State

Attorney for Petitioner:

(Type or Print Name) Deborah Kalmar

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

City and State

Attorney's Telephone No.

Address

City and State

ORDERED BY The Zoning Commissioner of Baltimore County, this 31st day of July, 1985, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 4th day of September, 1985, at 11:00 o'clock.

(over)

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IN RE: PETITION SPECIAL HEARING
N/S of Marnat Road, 419' E of
Seven Mile Lane (3308 Marnat
Road) 3rd Election District
Martin Kalmar, et ux,
Petitioners
Case No. 86-98-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request approval by the Zoning Commissioner to permit a second living unit to be added to their home, as more particularly described on Petitioners' Exhibit 1.

The Petitioner, Deborah Kalmar, appeared and testified. There were no Pro-Testants.

Testimony indicated that the subject property, zoned D.R.5.5 and measuring 469' x 120', is improved with a 30' x 33' single-family dwelling. The Petitioners propose to construct a 20' x 25' addition to the rear of their home to be used by Mrs. Kalmar's mother, Lucille Warren. The addition would contain a separate kitchen, combination living room and dining room, bedroom, bathroom, and closet. Presently, the Petitioners, their two children, and Mrs. Warren occupy the home.

Mrs. Warren previously lived in Michigan, but in December, 1984, her home was mistakenly firebombed according to the local police. The trauma and pain associated with this tragic episode caused Mrs. Kalmar, an only child, to suggest that Mrs. Warren come live with the Petitioners. To say the least, the living arrangement is tight, but what mitigates in favor of the second living unit in addition to the small existing quarters is that Mr. and Mrs. Kalmar maintain a kosher kitchen. Mrs. Warren, who is not Jewish, does not and cannot. She suffers from hypertension and the salt contained in kosher meat would be a

problem. Nonetheless, maintenance of the kosher kitchen does create a practical difficulty. There is no question that Mrs. Warren is an integral member of the family's primary living arrangement. None of the neighbors object to the proposal.

The Petitioners seek relief pursuant to Sections 500.1 and 500.7, Baltimore County Zoning Regulations (BCZR).

A D.R.5.5 Zone permits single-family dwellings as a matter of right. Section 1801.1.A, BCZR. Section 101, BCZR, defines "family" as:

Any number of individuals lawfully living together as a single housekeeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel.

Section 402 provides for the conversion of dwellings from single-family to multi-family units if certain lot dimensional requirements are met. The lot here cannot satisfy those requirements. However, in Stafford v. Village of Sands Point, 102 NYS 2d 910 (1951), it was held that a dwelling with two kitchens and multiple uses for other rooms which housed the plaintiff's family and his mother and sister was a single-family use. The Court ruled that the proper test was an inquiry into the design of the house and the nature of the occupancy.

A remarkable demographic change occurred from 1970 to 1980—the average household size decreased from 3.11 to 2.75 persons per household. Moreover, the Population Reference Bureau predicts a further decrease to 2.47 persons per household. Even though there has been an increase of over 11% in population with a resultant increase in the total number of households, the decrease in average household size shall continue. See 16.01, 1984 Zoning & Planning Law Handbook, J. Benjamin Galley, Ed. In addition, the age group that is growing faster than any other is persons over 65, presently numbering 24 million. Approximately 6.4 million live in one-person households, which is the largest

numerical increase of any type of household. See Section 16.02, Handbook, supra.

As a result of this demographic revolution and the expanding needs of the elderly, there has been an increasing demand for "accessory apartments", i.e., units created within existing single-family homes or on the same lots. They are independent units, but may share an entrance, yard, and parking area with the primary units. They are often called "mother-in-law apartments", "mother-daughter homes", "secondary residences", "shared housing", "granny flats", or "elderly cottage housing opportunities" (ECHO) housing. Some have common kitchens, some are detached or semi-detached units usually placed in the rear yard from the existing dwelling. All raise similar regulatory problems and legal issues. All attempt to resolve a growing problem, i.e., the need for housing for the elderly that will provide familial supervision while permitting an element of perceived independence.

If the design of the Petitioners' home and the nature of the proposed occupancy are analyzed, it is clear that the existing BCZR will be satisfied. The Petitioners' proposal will not deviate from the legally acceptable single-family dwelling permitted in a D.R.5.5 Zone. Certainly, there is one dwelling now and the addition will not create two. The one-family unit will remain as such. There will be no increase in maximum permitted density.

Notwithstanding the above, the proposed use would also be accessory to the principal use of a one-family detached dwelling and would be permitted as a matter of right by Section 1801.1.A.14, BCZR. An accessory use is defined in Section 101 as being customarily incident and subordinate to and serving a principal use; subordinate in area, extent or purpose to the principal use; located on the same lot; and which contributes to the comfort, convenience or necessity of the occupants. There can be no question that the reason for having Mrs.

Kalmar's mother live with the Petitioners is for the family's comfort, convenience, and necessity in having her nearby for her safety and security. It is hoped and expected in our society that children return to their parents the love and security that parents initially provide to them. This is exhibited best in circumstances such as this, the elderly parent being cared for by her children with the parent being able to provide services for herself.

The expansion of this family will not in any way alter the nature of the family itself. A family is "a collective body of persons living together in one house, under the same management and head...directing their attention to the promotion of their mutual interest and social happiness." Stafford, supra. Mr. and Mrs. Kalmar are suggesting no more than this.

It is clear from the testimony that the use as proposed would not be contrary to the spirit and intent of the BCZR and would not result in substantial detriment to the public good.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief prayed for should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 9th day of September, 1985, that the Petition for Special Hearing to permit a second living unit to be added to the existing dwelling be and is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. The Petitioners must add a covenant to their Deed, recorded among the Land Records of Baltimore County, within 30 days from the date of this Order, restricting the use of their proposed addition to the relative described above and no other. Said covenant shall contain the proviso that such use shall terminate either at the death of said relative or upon the sale of the property, whichever occurs first. No subsequent purchaser shall maintain the second kitchen for any reason or purpose without a subsequent special hearing which shall be subject to the terms and conditions contained herein. A copy of the covenant shall be submitted to the Zoning Commissioner.

AJ/srl

cc: Mr. & Mrs. Martin Kalmar
People's Counsel

Case No. 86-98-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 31st day of July, 1985.

Petitioner Martin Kalmar, et ux
Petitioner's Attorney

Received by: James E. Dyer, Chairman
Zoning Plans Advisory Committee

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE August 21, 1985

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Mr. and Mrs. Martin Kalmar
3308 Marnat Road
Baltimore, Maryland 21208

RE: Item No. 408 - Case No. 86-98-SPH
Petitioners - Martin Kalmar, et ux
Special Hearing Petition

Dear Mr. and Mrs. Kalmar:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans on problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer, Jr.
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:nr

Enclosures

APR 11 1986

