

IN RE: PETITION FOR SPECIAL HEARING
NW/Corner Burke and Center Avenues
(110 Burke Avenue)
9th Election District
4th Councilmanic District

John B. Magruder, Jr., et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 99-506-SPH
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, John B. Magruder, Jr., and his wife, Elizabeth F. Magruder, through their attorney, Paul J. Feeley, Esquire. The Petitioners seek approval of the subject property as a legal, nonconforming, five-apartment dwelling. The subject property and relief sought are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the request were John and Elizabeth Magruder, property owners, Mary Jayne Jenkins, Mrs. Magruder's sister, and Paul J. Feeley, Esquire, attorney for the Petitioners. Appearing as a Protestant in the matter was Constant J. Georges, adjacent property owner. John M. Pjura III, a representative of the Towson Manor Improvement Association, appeared as an interested person.

An examination of the site plan reveals that the subject property is a corner lot with frontage on both Burke Avenue and Centre Avenue in Towson. The property consists of a gross area of 0.30 acres, more or less, zoned D.R.5.5, and is improved with a two and one-half story dwelling known as 110 Burke Avenue. The Petitioners seek approval of the use of the subject property as a nonconforming, five-apartment dwelling. A nonconforming use is defined in Section 101 of the Baltimore County Zoning Regulations (B.C.Z.R.) 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

use.” Nonconforming uses are regulated in Section 104. Essentially that Section provides that a nonconforming use may continue, if it is established that the use predates the date of the adoption of the zoning regulation which prohibits such use. Thus, the nonconforming use designation “grandfathers” an otherwise illegal use. Moreover, nonconforming uses may continue only if they have not been abandoned or discontinued for a period of one year or more.

As noted above, the subject property is zoned D.R.5.5. That zoning classification does not permit five apartment dwellings. Thus, the use is illegal and cannot continue unless legitimized by designation as a nonconforming use through the instant Petition.

Testifying in support of the request were the owners of the property, John B. Magruder and his wife, Elizabeth Magruder. Mrs. Magruder testified that her parents, Daniel R. and Elizabeth M. Finn, acquired the property in 1929. Mrs. Magruder testified that she was born in 1926 and resided on the subject property when she was a young girl. At that time the property was used as a single family dwelling. However, she indicated that she and her family moved from the house in or about 1937, at which time the building was converted to five apartments. After the conversion, the Finn family moved back into the unit, using two of the apartments for their family and leasing the other three apartments. Mrs. Magruder testified that the subject dwelling has been used as a five apartment building without interruption since that time.

Her testimony was corroborated by her husband, John B. Magruder. Mr. Magruder testified that he has been familiar with the property since approximately 1943 when he was in high school. He indicated that the building has not been materially altered since that time. He described the five apartment units which presently exist in the structure, including their entrances, access to utilities, etc. Mr. Magruder testified that the property has been used as a five apartment dwelling since his first knowledge of same in 1943. He testified that he and his wife acquired the property following the death of Mr. and Mrs. Finn. Specifically, the property was bequeathed to Mrs. Magruder and her sister, Mrs. Jenkins, and the Magruder's purchased Mrs. Jenkin's interest in the property in 1980. Mr. Magruder indicated that although tenants have come and gone and there have been short periods of vacancy, the use has been consistent throughout the years.

Mrs. Mary Jayne Jenkins, the sister of Elizabeth Magruder, also testified. She corroborated the testimony offered by Mr. & Mrs. Magruder and indicated that the use of the building as five apartments has been consistent since the mid to late 1930s.

The Petitioners also submitted a series of affidavits from individuals familiar with the house to corroborate the nonconforming use of the property as a five-apartment dwelling. Additionally, photographs of the site were provided. Two of the photographs submitted show the property in the late 1930s with a sign posted in front identifying the property as the "Burkshire Apartments".

Mr. Georges appeared and testified in opposition to the request. He raised certain issues regarding the use of the property and described what he perceived to be the detrimental impacts on the surrounding neighborhood caused by such use. He voiced concerns over traffic, pollution, etc. Unfortunately, these concerns are not germane in that the sole decision to be rendered in this case is whether the use is nonconforming. However, Mr. Georges did offer relevant testimony regarding the use of the property in the mid 1980s. He indicated that the apartments were vacant during that time and as such, the property is no longer nonconforming, pursuant to Section 104 of the B.C.Z.R.

Nonconforming uses are not favored by law (See McKemy v. Baltimore County, 39 Md. App. 257 (1978)). Nonetheless, they are allowed to continue if the regulatory criteria set out in Section 104 of the B.C.Z.R. are satisfied.

This case turns largely on the credibility of the witnesses. Members of the family who have owned this property on a continuous basis for over 70 years testified persuasively that the property is nonconforming. Although acknowledging that there have been short-term vacancies over the years when tenants left the premises, the Petitioners offered sworn testimony that the use has been continuous and uninterrupted. Moreover, I easily find that the property was converted to an apartment use prior to the date the first zoning regulations came to Baltimore County in 1945. The testimony of the witnesses as well as the photographs submitted are persuasive to a finding

that the conversion of the building into a five-apartment dwelling unit occurred in the mid to late 1930s.

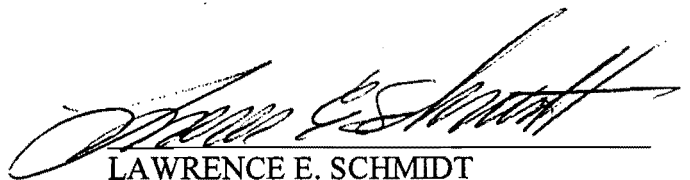
Although I believe that Mr. George's testimony was sincere, he clearly does not have access to the property to the same degree as did the Magruders and Mrs. Jenkins. Although he opined that certain of the apartments were vacant for periods in the 1980s, there was no evidence other than his oral testimony that was fact. With multiple apartments, a quiet tenant might easily be mistaken for a vacant unit.

Based upon the cumulative testimony and evidence presented, I am persuaded to grant the Petition for Special Hearing. In my judgment, the Petitioners have satisfied the criteria set out in Section 104 of the B.C.Z.R. and the evidence presented is sufficient to support a finding that the use of the subject property as a five-apartment dwelling is nonconforming under Section 104 of the B.C.Z.R. Thus, the Petition for Special Hearing shall be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of August, 1999 that the Petition for Special Hearing seeking approval of the subject property as a nonconforming, five-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that any party has the right to file an appeal within thirty (30) days of the date of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

August 10, 1999

Paul J. Feeley, Esquire
207 Courtland Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NW/Corner Burke and Centre Avenues
(110 Burke Avenue)
9th Election District – 4th Councilmanic District
John B. Magruder, Jr., et ux - Petitioners
Case No. 99-506-SPH

Dear Mr. Feeley:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. John B. Magruder, Jr.
616 Charles Street Avenue, Towson, Md. 21204
Mr. Constant J. Georges
112 Burke Avenue, Towson, Md. 21286
Mr. John M. Pjura, III
107 Linden Terrace, Towson, Md. 21286
People's Counsel; Case File

*non conforming use; future debate
PMZ*

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Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 110 BURKE AVE / 21286
which is presently zoned DR 15-5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve Property 110 Burke Avenue, Towson, Maryland as a non-conforming use. The property was converted into five (5) apartments in the late 1930's and has been continuously occupied as five (5) apartments up until the present time.

The property is now owned by the daughter of the 1930 owners and her husband.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

Name - Type or Print

Signature

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Representative to be Contacted:

Name

Address

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By _____ Date _____

Case No. 99-506-SPH

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date: July 13, 1999

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for July 12, 1999
Item No. 506

The Bureau of Development Plans Review has reviewed the subject zoning item. The issue of parking shall be clearly addressed.

RWB:jrb

cc: File



Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

August 10, 1999

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE ITEM NUMBERS BELOW

Location: DISTRIBUTION MEETING OF JULY 6, 1999

Item No.: 506, 509, 517, 521, AND 522 Zoning Agenda:

Gentlemen:

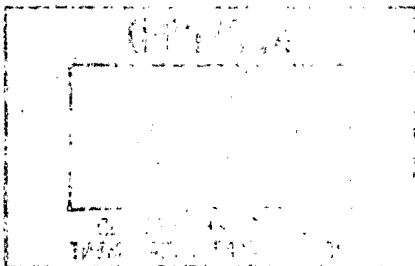
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



Come visit the County's Website at www.co.ba.md.us



RE: PETITION FOR SPECIAL HEARING
110 Burke Avenue, NWC Burke and Centre Avenues
9th Election District, 4th Councilmanic

Legal Owner: John B. & Elizabeth F. Magruder, Jr.
Petitioner(s)

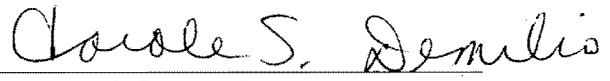
* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 99-506-SPH

* * * * *

ENTRY OF APPEARANCE

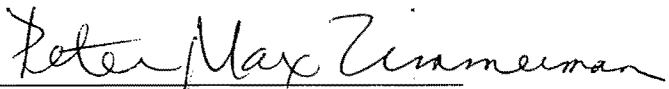
Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 1999 a copy of the foregoing Entry of Appearance was mailed to Paul J. Feeley, Esq., 207 Courtland Avenue, Towson, MD 21204, attorney for Petitioners.


PETER MAX ZIMMERMAN

{"Neighborhood..."} {Deleted by Bill No. 3, 1992.}

Nightclub: A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the building code of Baltimore County. {Bill No. 110, 1993.}

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. [B.C.Z.R., 1955; Bill No. 18, 1976.]

Nonindustrial Use: Any use other than an industrial, quasi-industrial, or industry-related use. [Bill No. 178, 1979.]

Nudity: A state of dress in which a human buttock, anus, genitalia, or female breast is completely bared. [Bill No. 137, 1990.]

Nudity, Partial: A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices. [Bill No. 137, 1990.]

Nursery, Horticultural: An agricultural operation primarily engaged in the production and marketing of trees, shrubs and plants. The plant materials may be produced on the premises and may be purchased elsewhere at any stage of maturity for further production. Horticultural nurseries may engage in accessory uses such as storage of plant materials, sale of products necessary for the health of the nursery stock, and provision of limited landscape services. A nursery which sells plant materials grown exclusively on-site and which does not offer any of the accessory services permitted at horticultural nurseries, shall be considered a farm. {Bill No. 41, 1992.}

Nursery School: A school or a level within a school providing educational instruction for children between two and four years old. [Bill No. 47, 1985.]

Nursing Home: (Formerly Convalescent Home): A facility which provides board, shelter, and nursing care to chronic or convalescent patients. This term also includes facilities which provide domiciliary care within a nursing home. [Bill No. 37, 1988.]

Office: A building or portion of a building used for conducting the affairs of a business, profession, service, industry, or government, including a medical office. The term "office" does not include a bank, a post office, a veterinarian's office, nor an establishment where merchandise is stored on or sold from the premises. [Bills No. 13, 1980; No. 167, 1980; No. 37, 1988; No. 186, 1994.]

Section 104--NONCONFORMING USES [B.C.Z.R., 1955.]

104.1--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. [B.C.Z.R., 1955; Bill No. 18, 1976; Bill No. 124, 1991.]

104.2--A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. {Bill No. 124, 1991.}

104.3--No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the zoning commissioner pursuant to Section 307. {Bill No. 124, 1991.}

104.4--Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. [Bill No. 167, 1980; Bill No. 124, 1991.]

104.5--Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this subsection is subject to the provisions of Section 104.1, Section 104.2 and Section 104.3 above, and to the provisions of Section 307.2, BCZR. [Bill No. 32, 1988; Bill No. 124, 1991.]

104.6--A striptease business lawfully operating prior to the effective date of this legislation that is in violation of the requirements contained herein shall be deemed a nonconforming use. A striptease business which is a nonconforming use:

1. shall be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more; and
2. shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. [Bill No. 137, 1990.]