

Pocomoke City  
Board of Appeals Meeting  
July 10, 2019

A hearing was held before the Pocomoke City Board of Zoning Appeals on July 10, 2019 in the Council Chambers at City Hall. The hearing was called to order at 5:00 P.M.

Present Members: Chairman, Douglas Matthews  
Rob Clarke, John P Chamberlain, Rob Price  
Planning Director: Dan Brandewie  
Attorney for Board of Appeals: James Porter  
City Clerk: Michelle Beckett-El Soloh

Hearing called to order by Chairman Douglas Matthews at 5:00 PM. He stated that the purpose of the hearing is to hear an appeal from Michael C. Dunn for violation case #GEN-00567-2018. The decision by the Zoning Administrator was to disallow the residential use of the commercial zoned property in the B-1 zoning district and for the failure of the owner to obtain a conditional use permit to use a second floor for residential use of said property located at 205 2<sup>nd</sup> Street, Pocomoke City.

Attorney Porter said the procedure is to have staff report first, then applicant's testimony, then proponent's testimony, then opposition and at the end of opposition the applicant will have opportunity for rebuttal. The Board should then deliberate and render a decision.

Planning Director Dan Brandewie was sworn in. He stated he submitted a memo including a brief history of the case as well as exhibits. Arapaho Realty LLC, Agent Michael C. Dunn, is appealing the decision of the Zoning Administrator and violation for allowing residential use of commercial property in a B-1 Zoning District and failing to obtain a conditional use permit for residential use of a 2<sup>nd</sup> floor. The property is at 205 2<sup>nd</sup> Street and is a 2-story structure built around the 1920's. It is in the B-1 Downtown Zoning District. It was purchased in 1987 by Arapaho Realty in 2007 from Barbara Ann Wise. In February and March of 2018, there were several property maintenance violations observed, including trash and rubbish, and structural code violations. Violation notice #576 was issued on July 16, 2018. A cease occupation of structure or vacate the premises order was issued due to failure to obtain necessary permits. A follow up letter was sent on November 8, 2018 for four violations. Mr. Dunn elected to go to trial in lieu of paying fines. The judge delayed the decision on the violations to allow Mr. Dunn time to resolve the land use issues with the City. Mr. Dunn was advised that he could appeal the decision of the Zoning Administrator to vacate the premises and cease use of the property as residential use; or he could file for a zoning map amendment and zone the property residential. Mr. Dunn has elected to appeal the decision of the Zoning Administrator. His argument is that the property has been in continuous use as a residential single-use family dwelling since he purchased it and is therefore a nonconforming land use and should be allowed to continue. If the Board does make a determination that it is nonconforming land use, there may be a violation for a porch structure under §230-15. For the record, all adjacent property owners have been properly notified and all advertising obligations have been met. A legal advertisement was placed in the Daily Times on June 6, 2019. One letter from an adjacent property owner in support of allowing to the property continue as residential was received. The text of the B-1 zoning district's permitted uses, conditional uses, nonconforming uses are included in the packet. The Attorney, Mr. Porter collected exhibits A through I, staff reports and admitted them into evidence. Mr. Brandewie stated that other property owners have asked to have a residential upstairs in a B-1 Zoning District and they have been informed that they aren't allowed to do that unless they comply with the B-1 zoning requirements. In fairness, all property owners have to follow the rules.

Michael C. Dunn, 600 Eastern Shore Dr, Salisbury, MD, Arapaho Realty, was called forward and sworn in. Mr. Dunn said he understands what the Planning Director is trying to do. He understands that you can't take a

business and put an apartment in it. Mr. Dunn still contends that this particular property has been used as a residence since its existence. This is grandfathered as a preexisting nonconforming use since its conception. We have gone through water bills and electric bills to see if there was any time that utilities were not being used or it was vacant. There was only one short instance where a lady lived there and worked for the Discovery Center and sold art on the side but it was her primary residence. He checked with Mrs. Lusby, who is a long-time resident, and she could not recall any time that it was ever used as a business. Arapaho Realty has owned it since 2007 and it has always been used as a residence. There might have been some small businesses in there before. Currently, both floors are rented to one person. Mr. Price asked why wouldn't he just get it rezoned. Mr. Dunn answered that he feels that it should be grandfathered and if he did apply to rezone it, they would be giving up that status. Mr. Price asked if rental properties are registered with the City. Mr. Brandewie said no, that is not required at this time. Mr. Price also asked if any bill history had shown any period of extended shut off time. Mr. Brandewie answered no, that no utility shut-offs for extended periods of time were found. Mr. Dunn said this unit does not have complete living quarters on the upstairs floor. That lends to it as being classified as a residence.

Mr. Porter called for any proponents of the case. Ms. Rita Ullmann, 33883 Market St Extended, stepped forward and was sworn in. She stated that she works with the Costen House Museum and moved here 16 years ago. Since she has been here, the property in question has been lived in in one form or another. There were houses around the area too but some of them has been removed. The property doesn't suit itself as a business and feels that it should be residential. She also stated that the Costen House business has never had any issues with residents in that property. The worst that happened is that there were some children's toys that would end up in the yard but they just put them back in the renter's yard.

Mr. Porter called for any opponents to come forward. There were no opponents. There were no letters in opposition.

Chairman Matthews closed the Public Hearing portion of the meeting.

Mr. Porter stated that in the case of grandfathering, a specific piece of property has been used over a course of time for a specific use. It would be allowed to continue for that specific use. There is also a nonconforming use where something has been allowed to continue over the course of time but is not an allowed use in a specific zone. As long as the owner can prove that there has been a continuous use of the nonconforming use that is allowed to continue. However, if that nonconforming use ceases to continue for 6 months or more then it is not allowed to continue.

Board of Appeals discussion. Motion made to allow the property at 205 2<sup>nd</sup> St to continue as a grandfathered residential-use property (Price, Chamberlain). Matthews-aye, Price-aye, Clarke-aye, Chamberlain-aye, Price-aye; motion passed.

Motion to approve the minutes from January 9, 2019 with the amendment that Mr. Rob Price was not in attendance on that date (Matthews, Price) at 6:00PM. Matthews-aye, Price-aye, Clarke-aye, Chamberlain-aye, Price-aye; motion passed.

Motion to adjourn meeting (Matthews, Clarke) at 6:02PM. Matthews-aye, Price-aye, Clarke-aye, Chamberlain-aye, Price-aye; motion carried.

Approved: *K. Michelle Beckett-El Soloh*, City Clerk