

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

INGRID ANCHINGES,
Appellant,

v.

CITY OF ST. PETE BEACH,
Appellee.

Ref. No. 17-000022AP-88B

UCN: 522017AP000022XXXXCI

ORDER AND OPINION

Appellant challenges the Findings of Fact and Order (“final order”) of the City of St. Pete Beach Code Enforcement Special Magistrate finding her in violation of the City’s Code of Ordinances (“Code”) for having an unauthorized third dwelling unit in the garage. For the reasons set forth below, the final order is affirmed.

Facts and Procedural History

In 2016, Appellant purchased the subject residential property, which is a two dwelling unit property in a single dwelling unit zoned area¹ that has a detached garage with a kitchen, bathroom, and laundry facility. On September 15, 2016, the City issued a Notice of Violation finding the property in violation of Code §§ 104.6.2 (Work commencing before permit issuance), 105.1 (Work requiring permit), 6.13(2)(c) (“In no case shall a detached garage have any sleeping room, kitchen facilities[,], or plumbing”), and 12.6 (Minimum zoning lot requirements). The Notice stated that Appellant had “converted [the] detached garage into living space without obtaining the required building permits.” Moreover, it stated that because such living space “is not permitted due to the minimum lot size requirements for [the] zoning district[,], . . . no permit [could] be issued.” Thus, to comply with the Notice would require Appellant to eliminate the

¹ It is undisputed that the property is entitled to grandfathered status for the second dwelling unit by virtue of an exception that was granted in 1946. The issue on appeal concerns the status of a third dwelling unit.

living space facilities in the detached garage. Appellant failed to bring her property into compliance with the Code and on March 14, 2017, the City held a first hearing. Thereafter, Appellant's property continued to be noncompliant, and on April 20, 2017, the City held a return hearing. At the return hearing, Appellant introduced evidence of a building and plumbing inspection of the property that she had procured prior to the hearing. The Special Magistrate found, in part, as follows:

8. [Appellant] presented evidence which indicates that the plumbing and fixtures located in the garage were installed prior to the enactment of Section 104.62[,], Section 105.1, and Section 6.13, of the Code of Ordinances of the City of St. Pete Beach. Upon inspection, the City agreed that the plumbing and fixtures for the laundry facilities likely were installed prior to the enactment of Section 104.62, Section 105.1, and Section 6.13, of the Code of Ordinances of the City of St. Pete Beach. As such, the property is entitled to grandfathered status² and may maintain the plumbing for the purposes of laundry facilities only.

9. Although [Appellant] is entitled to retain the plumbing for laundry facilities, the restroom and kitchen facilities must be completely removed in order for the garage unit to no longer qualify as a "dwelling unit" within the meaning of Section 12.6, of the Code of Ordinances of the City of St. Pete Beach.

In the final order, the Special Magistrate ultimately held Appellant in violation of only Code § 12.6 (Minimum zoning lot requirements) and required the property to come into compliance "by taking the remedial action as set forth in the Notice of Violation, which includes, but is not limited to altering and tying off the existing plumbing for the bathroom and kitchen facilities."³ On May 22, 2017, Appellant filed the instant appeal challenging the final order.

Standard of Review

"Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is

² Under the Code, "[n]onconforming uses of land, structures and premises which were lawfully established prior to the adoption of this Code, but which are not permitted or are otherwise currently prohibited by this Code, may continue to operate at their present location until such time as such use has been discontinued." § 3.10(c), Code.

³ Appellant does not challenge the Special Magistrate's finding that the kitchen is not grandfathered and must be removed, so it is not further addressed.

accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence.” *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Discussion

Appellant appears to argue that the City erred in finding her laundry facility, but not her bathroom toilet, grandfathered as a nonconforming use under the Code.⁴ In her letters, she contends that she should be entitled to have the bathroom qualify for grandfathered status because she “never abandoned the same non-conforming use,” “it has never made any nuisance to the neighbors, or harmful the health and welfare or change any density to the community and the existence of the bathroom did not have or will not have substantial different impact to the neighborhood [sic].” As attachments to her Reply Brief, Appellant filed evidence that she appears to have submitted below, including a property card from 2016 indicating the property has two dwelling units, an unsworn letter from the previous property owner stating that between 2011 and 2016 he replaced the garage cabinets, sink, doors, washing machine, shower fixtures, shower basin, toilet, and electric receptacles, an email from the plumber stating that the “vent/drain pipe coming out of the ground where the washing machine was hooked up” is “at least 20 years old,” and her building and plumbing inspection report referred to above.

The City concedes that the plumbing is at least twenty years old, but maintains that the property was never permitted to have three dwelling units and to allow the garage bathroom to remain would make the garage a “dwelling unit” in violation of the Code’s current maximum

⁴ Appellant is pro se. She filed a letter with her Notice of Appeal and another letter on June 15, 2017. On January 2, 2018, Appellant filed another letter as her “Initial Brief.” However, this “Initial Brief” actually refers to a different code enforcement case that Appellant appealed, which was dismissed on December 22, 2017. On April 3, 2018, Appellant filed her Reply Brief. Only the first two letters and the Reply Brief actually refer to the factual circumstances and her corresponding arguments in this appeal.

density requirement. Thus, the City argues that because the property is not grandfathered for a third dwelling unit and cannot be currently allowed to have one, the bathroom must be removed.

The Special Magistrate found that the plumbing was at least twenty years old, but the history of the property allowed for only two dwelling units and no permits were issued to allow for a third dwelling unit or a bathroom in the garage; thus, the garage was never “lawfully established” as a dwelling unit, which is required to qualify it as a nonconforming use (i.e. to entitle it to grandfathered status). *See* § 3.10(c), Code. Appellant did not present evidence to the contrary. Accordingly, the Special Magistrate’s holding that the plumbing could remain for a washer and dryer, but the bathroom must be removed is supported by competent substantial evidence and does not violate the essential requirements of law.

Conclusion

Because the final order is supported by competent substantial evidence and does not violate the essential requirements of law, it is

ORDERED AND ADJUDGED that:

1. The final order is **AFFIRMED**.
2. Appellee’s Motion for Attorney’s Fees and Costs is **GRANTED in part** as to attorney’s fees. The assessment of appellate attorney’s fees is remanded to the lower tribunal.
3. Appellee’s Motion for Attorney’s Fees and Costs **DENIED in part** as to costs.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on this ____ day of _____, 2018.

Original Order entered on December 10, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

Copies furnished to:

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