

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
W/S Saffa Road, 99' S of c/line of		
Robinson Avenue	*	ZONING COMMISSIONER
<b>(2612A Saffa Road)</b>		
15 <sup>th</sup> Election District	*	OF
7 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Brenda L. Scott		
Petitioner	*	<b>Case No. 2011-0057-SPH</b>

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**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 legal owner of the subject property, Brenda L. Scott. The Petitioner requests a special hearing to approve the nonconforming use of an existing apartment (a second dwelling on a lot) in a separate structure. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Brenda Scott, property owner, Steven K. Broyles, a professional engineer with Steven K. Broyles and Associates, who prepared the site plan, and nearby neighbors; namely, Pollie Witherspoon, Mildred Ranson, Douglas F. Wilson (Pastor of the Galilee Baptist Church), and Mary R. Wilson. There were no other interested persons present, however, it is to be noted that six (6) notarized letters of support were received from residents; Mildred Ranson (12 Robinson Avenue), James Jones, Sr. (9 Robinson Avenue), Yvonne Weaver (2602 Saffa Road), Carole L. Young (8022 Norris Lane), Margaret Smith (2611 Saffa Road), and Lorraine Owens, (2512 North Point Road). See Petitioner’s Exhibit 7.

Testimony and evidence offered revealed that the subject property is a rectangularly shaped parcel (Lot 8 – John Saffa Property) located on the west side of Saffa Road and south of

North Point Boulevard in Dundalk. The property contains a gross area of 0.164 acres (7,138 square feet), zoned D.R.5.5 and improved with a single-family, one-story dwelling that is one of the original Steel Village residences transported from the Bethlehem Steel property, a garage behind the home that has now been razed and a detached garage (38' x 26' x 23') containing a second floor apartment. It is this structure shown on the site plan in the northwest corner of the lot that is the subject of the hearing before me.

First to testify was Steven Broyles. His experience as a licensed land surveyor and professional engineer is substantial and he is an expert in county zoning and development regulations, structural engineering and building code interpretations. *See* Petitioner's Exhibit 2 - Resume. He discussed the history of the property and his determination of how the improvements were originally built and configured. Based on his inspection, evaluation of evidence he came across, and a review of public records, he offered his opinion which is briefly outlined below:

- He previously surveyed the adjacent contiguous property at 11 Robinson Avenue (Lot 9 of the Saffa property subdivision) owned and occupied by the Petitioner, Ms. Scott, to generate a site plan for a garage and subsequent zoning variance in 1995 – Case No. 06-359-A. At that time, he also surveyed 2612 and 2612A Saffa Road – the subject of this hearing – and states it remains unchanged with a principal single-family dwelling, detached garage and second floor apartment, except for the recent razing and removal of a third structure – a dilapidated one-story shed.
- He presented as Petitioner's Exhibit 4 – a Baltimore County Department of Public Works position sheet No. 6 SE 24 with a date of March 3, 1942 showing the principal single-family dwelling and subject detached garage as they exist today.
- He opined that the architecture, type of construction and building materials used on both structures – the principal single-family dwelling and detached garage with second floor apartment – are clearly pre World-War II 1941 construction based upon:
  1. Open exterior walls were inspected, photographed and submitted as Petitioner's Exhibit 6D documenting the wood

lath and plaster mixed with horse hair, a technique used up to the 1930's.

2. The electrical wiring seen in Petitioner's Photo Exhibit 6E in the ceiling disclosed electrical wiring wrapped in asphalt impregnated cloth as insulation typically used in pre World-War II 1941 construction.
  3. The gas stove in the apartment was manufactured by the Oriole Stove Company – *See* Petitioner's Photo Exhibit 6E – and documents a type and model not manufactured after 1938.
  4. A cast iron claw foot bathtub manufactured by Standard Sanitary and American Radiator Corporation, Baltimore had a foundry stamp on the bottom of the tub he inspected and photographed – *See* Petitioner's Photo Exhibit 6F – that documents the foundry date April 9, 1941. Again, clearly pre World-War II 1941 construction.
- The cast iron claw foot tub is 30 inches wide and the existing steps leading to the second floor where it was located has a 90-degree turn and are as narrow as 29.5 inches. The tub will not fit up these existing steps and was previously placed in the bathroom prior to final framing and close-in of the structure. Again, pre World-War II 1941 construction techniques. *See* Petitioner's Photo Exhibit 6F.

He stated it was his professional opinion that both of the aforesaid structures – the principal single-family dwelling and a second floor apartment in a detached garage – were constructed prior to January 2, 1945 and therefore establishes Petitioner's request for a non-conforming use.

Brenda Scott stated that she grew up in the area and provided a detailed history of the improvements on the property. Both the subject property – Lot 8 and her residence – Lot 9 were in common ownership in the early 1940's. She has owned and resided at 11 Robinson Avenue for over 30 years. During that period, the garage apartment was continuously occupied. In April 2008, she decided to purchase 2612 Saffa Road primarily to control the property's use. She describes the prior people living in the home and particularly the apartment as undesirables.

They owned dogs that created a nuisance and posed a number of difficulties in the area that the neighbors found disconcerting. It was her desire to obtain the property and renovate the structures bringing them up to current standards. As evidenced in the photographs produced at the hearing, the work at 2612 Saffa Road has been completed, however, when applying for building permits for the detached garage structure – 2612A Saffa Road – she was advised to file the instant petition to legitimize the second structure’s apartment use.

In support of the nonconforming use, Ms. Scott provided affidavits received from her neighbors that go back to 1950. These notarized statements verify a continuous use and name many families that have resided in the apartment over the years. Corroborating testimony was next received from Pastor Wilson, who (for 32 years), has seen the property and the second floor of the garage being used as an apartment. Likewise, Mildred Ranson has been in the neighborhood for 44 years and lived across the street from the property. Mary Wilson has been in the neighborhood for 56 years and confirmed that the apartment has always been occupied.

The term “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 a use.” The Court of Appeals of Maryland has articulated the standard for a permissible nonconforming use and has held that when a property owner at the time of adoption of the last comprehensive zoning was using land for use which by new legislative action became non-permitted, the owner has a lawful nonconforming use. *See, e.g., Board of Zoning Appeals v. Meyer*, 207 Md. 389 (1955). Pursuant to Section 104.1 of the B.C.Z.R., a nonconforming use may continue unless the use is abandoned or discontinued for a period of one year or longer.

Considering all the testimony and the evidence presented that the nonconforming use presented in this case predates, by a substantial period, the adoption of the Baltimore County

Zoning Regulations (B.C.Z.R.) in 1945, and I am compelled to grant the special hearing relief. It is clear that the request does not adversely impact the neighborhood, nor is it detrimental to the health, safety or general welfare of the community.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the Petitioner has met her burden of proof and is entitled to the relief as a nonconforming use.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 21<sup>st</sup> day of October 2010, that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the continued nonconforming use of an existing apartment (a second dwelling on a lot) in a separate structure, in accordance with Petitioner's Exhibit 1, be and are hereby GRANTED, subject to the following:

1. Petitioner may continue the aforementioned nonconforming use and apply for any applicable permits and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at her own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County