

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
W side of Montrose Avenue; 285 feet N		
of the c/l of Idlewilde Avenue	*	DEPUTY ZONING
1 st Election District		
1 st Councilmanic District	*	COMMISSIONER
(108 Montrose Avenue)		
	*	FOR BALTIMORE COUNTY
Thomas and Joanne Booth		
<i>Petitioners</i>	*	CASE NO. 2011-0088-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owners, Thomas and Joanne Booth. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a nonconforming use for a 5 unit apartment. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief was Petitioner Thomas Booth. Also appearing in support of the requested relief was Edmund Leonard of 1898 Norhurst Way N. in Catonsville. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel consisting of approximately 1.14 acres, more or less, zoned D.R.2. The property is located on the west side of Montrose Avenue, south of Frederick Road and north of Idlewilde Avenue, in the Catonsville area of Baltimore County. The subject property is improved with an existing 2½-story frame apartment building situated in the center of the property facing Montrose Avenue. There is a macadam driveway the runs along the north side of the property in a westerly direction to

a large macadam parking area for approximately 13 vehicles to the rear of the site, with a four car frame garage located to the rear as well.

As indicated in the tax records and accompanying tax map that were marked and accepted into evidence as Petitioners' Exhibit 2, as well as Petitioner's testimony, the property is known as Parcel 955 and is not part of a subdivision. Petitioners have owned the property since 1983. As confirmed by the Deed that was marked and accepted into evidence as Petitioners' Exhibit 4, Petitioners purchased the property from Jack and Evelyn Peterson on September 30, 1983. A photograph of the sign posting that provided notice of the hearing was marked and accepted into evidence as Petitioners' Exhibit 3 and shows the front of the dwelling as set back from Montrose Avenue, as well as the driveway entrance.

According to Petitioner, since he and his wife purchased the property 27 years ago, it has been utilized without interruption as an apartment building with five apartment units. In particular, there is one large first floor apartment near the front with two bedrooms and a smaller apartment toward the rear (consisting of two stories) that has 1½ bedrooms. On the second floor are two one bedroom apartments and the third floor also contains an apartment with 1½ bedrooms. The entrance to the large first floor apartment, the two second floor apartments, and the apartment on the third floor is the main front entrance into the building. The smaller first floor apartment to the rear has its own private entrance. At this juncture, Petitioners' son and his fiancé intend to move into the large first floor apartment and eventually acquire the property from Petitioners, and continue to rent the other four apartments. Before doing so, however, Petitioners believe it is prudent to obtain confirmation that the five unit apartment dwelling is a valid nonconforming use so that their son can continue to use the property in that manner going forward.

In support of the special hearing request to approve a valid nonconforming use, Petitioner presented Affidavits from previous owners and a tenant. These Affidavits -- from the gentleman

who attended the hearing, Edmund Leonard; his mother Virginia Leonard; and a tenant who lived in one of the apartments for many years, Herbert Menard -- were marked and accepted into evidence as Petitioners' Exhibits 5A, 5B, and 5C, respectively. Collectively, the Affidavits indicate that Mr. Leonard's parents purchased the property in 1955 and at that time, the building was already being used as a five apartment building. They continued this use and Mr. Leonard lived in one of the apartments as did Mr. Menard for many years thereafter.

Mr. Leonard also testified that having lived in this area all his life (he currently lives at 1898 Norhurst Way N. just a few blocks away) and gaining knowledge of the community during that time, he could offer insights into the historical use of the property. In that vein, he indicated that the subject 2½-story building on the subject site was built as a single-family dwelling in 1898 and like many of the large homes of the day built in the area on relatively large lots, it was used for the first several decades as a summer retreat for wealthy families from the City -- families would spend summers in rural Catonsville away from the heat and congestion of the City. In around 1940, the dwelling was converted into its present configuration as a five unit apartment building. Although from the exterior it still has the appearance of a large dwelling, the interior was remodeled and reconfigured into five separate apartments. According to Mr. Leonard, it has been used as a five unit apartment building since that time and throughout the ensuing decades.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The comments indicate no opposition or other recommendations concerning the requested relief.

In Baltimore County, a nonconforming use is defined in Section 101 of the 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.” In addition, Section 104.1 of the B.C.Z.R. states that “[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.” It is well settled that nonconforming uses are not favored under the law. It is also recognized that nonconforming uses are contrary to the zoning scheme established by the Zoning Regulations and that the restrictions on such uses is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *See, County Council of Prince George’s County v. E.L. Gardner, Inc.*, 293 Md. 259 (1982). Moreover, it is the burden of a petitioner to prove the nonconforming use during the period of time at issue.

In 1945, the County first adopted Zoning Regulations and delineated four residential (A, B, C, and D), one commercial (E), and two industrial (F and G) zones. On March 31, 1955, the Regulations were updated to include specific residential zones to account for single-family and multi-family residences, as well as more precise classifications to deal with the minimum size required for a lot. In both the 1945 and 1955 Regulations, nonconforming uses were recognized and permitted to continue with certain exceptions and restrictions.

Turning now to the instant matter, the evidence indicates that this large 2½-story dwelling was built in 1899 as a summer retreat for wealthy Baltimore families seeking refuge from the hot summers of the City. In approximately 1940, the dwelling was converted interiorly into five separate apartments. At some point, the large parking area and the four car garage were also built. The uncontradicted testimony, as well as the Affidavits accepted into evidence, indicate that the dwelling has been utilized as a five unit apartment building continuously since that time. Petitioner Mr. Booth also added in his testimony that he and his wife have continued this use since their ownership began in 1983. Based on my view of the evidence, it is clear that the nonconforming use presented in this case predates the adoption of the Zoning Regulations on March 31, 1955 and the

earlier Regulations in 1945 and I am persuaded to grant the relief. Petitioners have met their burden at law and are entitled to the special hearing relief as a valid nonconforming use.

As an aside, Petitioners should familiarize themselves with and be aware of the requirements and limitations mandated by Section 104 of the B.C.Z.R. This section enumerates the parameters permitting continuation of a nonconforming use or structure, as well as factors regarding the possible termination of such a nonconforming use or structure.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners' request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 29th day of November, 2010 that Petitioners' request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a nonconforming use for a 5 unit apartment be and is hereby **GRANTED** subject to the following conditions:

1. Petitioners may apply for permits 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 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz