

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N side of Hillside Avenue, 195 feet E		
of York Road	*	OFFICE OF
9 th Election District		
5 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(1 Hillside Avenue)		
	*	FOR BALTIMORE COUNTY
Mary Josephine Sexton		
<i>Petitioner</i>	*	CASE NO. 2011-0176-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Special Hearing filed by the owner of the subject property, Mary Josephine Sexton. Petitioner requests Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the non-conforming use of two “apartment” units in a single dwelling. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requested special hearing relief was Petitioner Mary Josephine Sexton, Adam D. Baker, Esquire, attorney for the Petitioner, and architect L.J. Link, Jr.

Testimony and evidence presented revealed that the subject property is approximately 5,500 square feet and is served by public water and sewer. The property was constructed in approximately 1919, and the Petitioner acquired the property in 1986.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated December 13, 2010 which indicate that it is unclear how long the subject property has been used as an apartment and that Office advised the Petitioner should demonstrate to the Zoning Commissioner that the two

apartment dwelling was lawfully established prior to the applicable law prohibiting such use. The Office also advised that if the relief was granted, there should be no parking or driveway access in the front yard. A revised comment was received from the Bureau of Development Plans Review, dated February 25, 2011, which states that the Bureau has no objection to the Petitioner's request.

At the outset of the hearing, Petitioner's counsel indicated that the special hearing relief was being sought to obtain a declaration that the Petitioner enjoyed a lawful non-conforming use for two units in a single dwelling in the subject property at 1 Hillside Avenue. Petitioner conceded that she did not meet the lot size and other bulk regulations set forth in B.C.Z.R. Section 402 governing conversion of single family dwellings, and indicated that regulation was adopted in 1955, and to the extent any alteration of the subject premises occurred, it was done prior to that date such that the Petitioner enjoys non-conforming use status. In the alternative, Petitioner contended that the house as originally constructed in 1919 qualified as a "duplex". The 1955 B.C.Z.R. defined a "duplex" as "two-family detached building with one housekeeping unit over the other." This definition was deleted from Section 101 of the B.C.Z.R. by Bill No. 100-1970. Thus, to the extent the Petitioner's dwelling constituted a "duplex", the Petitioner would enjoy vested legal rights with respect to that status, since a duplex dwelling was allowed as a matter of right in a residential zone in Baltimore County until the enactment of Bill No. 100-1970.

The first witness to testify was Mary Josephine Sexton, the Petitioner. The Petitioner testified she owns 1 Hillside Avenue, having purchased the dwelling in 1986. At the time she purchased the property, she indicated that tenants occupied the first and second floors, and that the property was advertised as a two unit dwelling. Petitioner indicated that she had letters from adjoining neighbors indicating that the unit had been a two family dwelling prior to 1955, but the Petitioner advised that she lost these letters when she moved to Atlanta.

Petitioner submitted as Exhibit 3 an affidavit of Rebecca Wilson, wherein the affiant testified that the home located at 1 Hillside Avenue has been occupied as a two apartment dwelling since at least June 1, 1968. The Petitioner admitted as Exhibit 4 floor plan sketches, which indicate that the first and second floors of the dwelling are essentially mirror images of one another. Each contains three bedrooms, a bathroom, a living room, a dining room, and kitchen. Finally, the Petitioner submitted as Exhibit 6 documentation from the Baltimore Gas and Electric Company verifying that at least since November 1, 1980 there have been separate electric and gas meters serving the property at 1 Hillside Avenue.

The next witness called by the Petitioner was architect L.J. Link, Jr., and his resume was submitted as Petitioner's Exhibit 7. Mr. Link testified that he has been an architect since 1976, and has testified as an expert witness numerous times before Baltimore County administrative agencies. Mr. Link testified that he visited the property, and described it as a Dutch Colonial which was popular in the 19th century. Mr. Link further testified that the house was constructed in approximately 1919, and stated in his opinion, based on an inspection of the exterior and interior features of the home, that no structural changes were made since it was built. Significantly, Mr. Link testified that there is no evidence of an interior stairwell ever existing between the first and second floor, which supported his opinion that the residence was built as a two unit dwelling. In further support of his opinion, Mr. Link submitted a floor plan marked as Exhibit 9, which shows that the floor plans of the first and second floors are essentially mirror images of one another. Finally, admitted as Petitioner's Exhibit 8 was an extract from a treatise known as "Classic Houses of the Twenties," by Loizeaux. Therein, at page 174, Mr. Link identified a design No. 14186-B, and advised that the two apartment dwelling identified in the Loizeaux treatise was nearly identical to the subject property, and the narrative provided with the design indicated that it was

common at this time to construct a two apartment house unit for a “thrifty family who, in building its own home, provides for a tenant to pay taxes and upkeep and, besides, a comfortable profit.” The final exhibit submitted in Petitioner’s case, marked and accepted as Exhibit 10, is a February 28, 2011 letter from Lynn Fuller, Records Supervisor at the State of Maryland Department of Assessments and Taxation, verifying for the assessment year 1965-1966, the premises at 1 Hillside Avenue was valued based on the land value, garage, and “house and apartment” value.

No Protestants appeared at the public hearing in this matter, and no letters of opposition were received by the Office of Administrative Hearings.

Based on the evidence and testimony presented at the hearing, I am persuaded to grant the relief sought by Petitioner, and determine that Petitioner enjoys lawful non-conforming use status with respect to the detached “two apartment dwelling” at 1 Hillside Avenue. As noted above, the record contains unrefuted evidence that the subject property has been used as a two unit dwelling since at least 1955. Although the Petitioner lost the letters she had from neighboring owners attesting to this fact, I found the Petitioner to be a credible witness and I find her testimony in this regard to be worthy of belief. Of course, the testimony is buttressed by documentary evidence including SDAT records indicating that the property valuation, since at least 1965, contained a component for a dwelling and apartment. There was simply no evidence or argument offered to suggest that this property has ever been used in a fashion other than a two unit dwelling, and I therefore find that Petitioner has satisfied her burden in establishing a lawful non-conforming use for the two apartment or “duplex” use of the premises at 1 Hillside Avenue.

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 Petitioner’s request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21st day of March, 2011 that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the non-conforming use of two units in a single dwelling be and is hereby GRANTED subject to the following condition:

1. There shall be no vehicular parking or driveway access in the front yard of the subject property.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County