

IN RE: PETITION FOR SPECIAL HEARING
7/5 York Road, 49.36' SW of
the c/l of Burke Avenue
(10 York Road)
9th Election District
4th Councilmanic District
John S. Donaldson, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-301-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 10 York Road, located in Towson. The Petition was filed by the owners of the property, John S. and Emily T. Donaldson, through their attorney, T. Rogers Harrison, Esquire. The Petitioners seek special hearing relief to approve the non-conforming use of the subject property as a two-apartment dwelling. The subject property and relief sought are more particularly described on the plan submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were John Donaldson, property owner, James Wiedefeld, Jr., and T. Rogers Harrison, Esquire, attorney for the Petitioner. Numerous residents of the surrounding community appeared as Protestants in the matter, including Jean Huff, President of the Burkleigh Square Community Association, and Betsy Kahl, both of whom testified in opposition to the relief requested.

Testimony presented revealed that the subject property consists of 0.408 acres, more or less, zoned D.R. 10-5 and is improved with a town-house dwelling unit containing two apartments. The Petitioners filed the instant Petition to establish the use of the property as a legal, nonconforming two-apartment dwelling. Mr. John Donaldson testified that he purchased the property in December 1981, at which time the dwelling com-

tained two apartments. Testimony indicated that at the time of his purchase, both his son and daughter were residents there. Mr. Donaldson testified that he has leased the two apartments continuously and without interruption since his purchase of the property in 1981.

Mr. Jim Wiedefeld appeared and testified on behalf of the Petition. Mr. Wiedefeld testified that he was familiar with the property from the time he was about 8 years old in 1955 until 1970. He testified that on August 25, 1955 his family purchased the property to provide housing for his grandparents. He testified that at that time the property had been converted into two apartments. He testified that shortly after his grandparents moved in, his grandfather passed away but that his grandmother continued to reside on the first floor of the property until approximately 1970. Mr. Wiedefeld testified that many times after school he would visit with his grandmother and would occasionally visit a Mrs. Hacks in the second floor apartment. He testified that Mrs. Hacks operated the beauty parlor at the corner of York Road and Burke Avenue. Further testimony indicated that as a boy, he would deliver the newspaper to Mrs. Hacks and was familiar with the second floor apartment at that time.

The Petitioner offered as Petitioner's Exhibit 3, a title history of the subject property beginning in 1952 up to the present time. Petitioner's Exhibit 3 demonstrated that a deed conveying title to this property to Mr. Wiedefeld's family was executed on August 25, 1955.

Many of the residents who attended the hearing in opposition to the Petitioners' request testified. Ms. Betsy Kahl, a representative of the Burkleigh Square Community Association, testified in her individual capacity. She testified that the subject property is too small to support two separate apartments. She is concerned about the parking problem that

has been created by virtue of these two apartments and the fact that there is no available parking for the other residents who reside along this stretch of York Road. She also believes that the residential character of the neighborhood is infringed upon by this two-family dwelling.

Mr. Jean Huff testified in opposition to the Petitioners' request. She testified that the Burkleigh Square Community Association has been cracking down on multi-family dwellings in the area due to problems associated with the tenants. She testified that Towson State University students have been renting these multi-family dwellings in the neighborhood and have caused many problems by being noisy and having weekend parties.

Mr. Frederick Holter also testified in opposition to the Petitioners' request. Mr. Holter has lived in the neighborhood since 1983. He agrees that the property has been used as a two-apartment rental since he has lived in the neighborhood. He testified that the subject property has recently become a problem as a result of the two tenants who currently reside there. He testified that on weekends, this area of York Road has resembled the movie "Animal House" by virtue of the loud parties and the number of students partying at this location. He testified that the noise and parking have been a tremendous problem to the other residents in this community.

Ms. Suzanne Walther appeared and testified in opposition to the Petitioners' request. Ms. Walther corroborated the prior testimony as to parking problems, the parties, and the noise that have generated from this particular property as well as other rental properties along this stretch of York Road.

Mr. James Hresko, who resides on the adjoining property at 11 York Road, testified in opposition to the Petitioners' request. Mr. Hresko

testified that he has lived adjacent to the subject property for the past 20 years and that in the last 5 years, it has become unbearable to live in his house. He stated that trash in the rear of the property has become a problem, as well as parking and noise from the partying. He testified that there are usually parties going on at the subject property, and that as many as 15 students can be seen partying on the back porch and on top of the garage on the property. He further testified that he was in the subject dwelling in 1978 and 1979 and was not aware of any kitchen being located on the second floor. He stated that he helped to carry kitchen fixtures into the property for his then neighbor, a Mr. Robert Hanson; however, he was not aware at to whether he was carrying kitchen fixtures for initial installation or replacing fixtures that were already there.

Finally, Mr. Charles Walther testified in opposition to the Petitioners' request. Mr. Walther also basically corroborated the testimony of the previous witnesses who testified in opposition to the property being used as two apartments.

As with all nonconforming use cases, the first task is to determine whether a lawful nonconforming use existed on the subject property prior to the date on which a change in the zoning regulations caused the use of the property to become illegal. The controlling date in this case is March 29, 1955.

After due consideration of the testimony and evidence presented, it appears that the relief requested must be denied. The Petitioners had the burden to establish that the subject property had been utilized as a two-apartment dwelling since prior to March 29, 1955, the effective date of the regulations governing this parcel of property. The testimony offered by the Petitioner, that being the personal observations of Mr. Jim Wiedefeld

field and the title history of the property which was entered into evidence as Petitioner's Exhibit 3, demonstrated the property's use as two apartments as far back as August 25, 1955. However, neither the Petitioner nor his witness could personally account for the interior of the subject dwelling prior to August 25, 1955. Mr. Wiedefeld was familiar with the property after his grandparents moved there in August 1955. The Petitioner was unable to offer any testimony which would establish that the property existed as two separate apartments prior to Mr. Wiedefeld's personal recollection in August 1955. The property may, in fact, have been two separate apartments prior thereto, however, the Petitioner has failed to produce the necessary witness or affidavits which would establish that the two apartments existed prior to March 29, 1955.

In addition to establishing the two-apartment use prior to March 29, 1955, the Petitioner must prove that the property was used continuously and without interruption each and every year thereafter as a two-apartment dwelling. There is a question in my mind as to how the property was used from 1970 until Mr. Donaldson purchased the property in December 1981. Mr. Wiedefeld's familiarity with the property being used as two apartments was from 1955 to 1970. There was no testimony offered as to the use of the property as two apartments for the period of time between 1970 and 1981. Therefore, I find the evidence lacking as to the property being continuously used as a two-apartment dwelling from 1970 to 1981. Due to this 11-year gap during which time the Petitioner was unable to establish the property's use as two apartments, and Mr. Wiedefeld's testimony which would not account for the two apartments prior to August 25, 1955, the relief requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing must be denied.

THEFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 4th day of May, 1994 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

IT IS FURTHER ORDERED that the property be converted to a single family dwelling within sixty (60) days of the date of this Order.

Wendy K. Harrison
WENDY K. HARRISON
Deputy Zoning Commissioner
for Baltimore County

TWK:bjs

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
430 Washington Avenue
Towson, MD 21204

May 4, 1994

(410) 887-4386

T. Rogers Harrison, Esquire
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
7/5 York Road, 49.36' SW of the c/l of Burke Avenue
(10 York Road)
9th Election District - 4th Councilmanic District
John S. Donaldson, et ux - Petitioners
Case No. 94-301-SPH

Dear Mr. Harrison:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management Office at 887-3391.

Very truly yours,

Wendy K. Harrison
WENDY K. HARRISON
Deputy Zoning Commissioner
for Baltimore County

TWK:bjs

cc: Mr. & Mrs. John Donaldson
109 Sleepy Hollow Lane, Annapolis, Md. 21401

Ms. Jean Huff
61 Burke Avenue, Towson, Md. 21206

Ms. Betsy Kahl
61 Burkshire Road, Towson, Md. 21206

People's Counsel: PLS

Petition for Special Hearing
to the Zoning Commissioner of Baltimore County
for the property located at 10 York Rd., Towson, MD 21204
which is presently zoned D.R. 10-5

This Petition shall be filed with the Office of Zoning Administration & Development Management, 430 Washington Avenue, Suite 113, Towson, MD 21204, and the description and plan attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 202.7 of the Zoning Regulations of Baltimore County, to determine whether the use of the property is in conformity with the Zoning Regulations of Baltimore County.

the non-conforming use of this property as a two-apartment dwelling.

Property is to be posted and advertised as provided by Zoning Regulations. A fee is to be paid by the petitioner of \$100.00 for the preparation of the petition, and further fees as are set by the Zoning Regulations and established by Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Highly recommended that the petitioner obtain the services of a professional engineer, architect, or other qualified person to prepare the petition and plan attached hereto and made a part hereof.

Contact Person/Address	
Name of Petitioner	John S. Donaldson
Address	109 Sleepy Hollow Ln, Annapolis, MD 21401
Telephone	410-241-4244
Name of Attorney	Emily T. Donaldson
Address	Emily T. Donaldson
Telephone	Annapolis, MD 21401
Name of Zoning Commissioner	Wendy K. Harrison
Address	430 Washington Avenue, Suite 113, Towson, MD 21204
Telephone	(410) 887-4386
Name of Planning & Zoning Officer	Wendy K. Harrison
Address	430 Washington Avenue, Suite 113, Towson, MD 21204
Telephone	(410) 887-4386
Name of Planning & Zoning Officer	Wendy K. Harrison
Address	430 Washington Avenue, Suite 113, Towson, MD 21204
Telephone	(410) 887-4386

ORDER RECEIVED FOR FILING
Date 5/4/94
By [Signature]

ORDER RECEIVED FOR FILING
Date 5/4/94
By [Signature]

ORDER RECEIVED FOR FILING
Date 5/4/94
By [Signature]

ORDER RECEIVED FOR FILING
Date 5/4/94
By [Signature]



111 West Chesapeake Avenue
Towson, MD 21204

(410) 867-3353

February 28, 1994

Mr. and Mrs. John S. Donaldson
1909 Sleepy Hollow Lane
Annapolis, Maryland 21403

RE: Case No. 94-301-SPI, Item No. 298
Petitioner: John S. Donaldson, et al.
Petition for Special Hearing

Dear Mr. and Mrs. Donaldson:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on January 28, 1994, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1. The director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.



2-794

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No. 94-298 (JEF)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small
for DAVID N. RATSEY, ACTING CHIEF
John Comasville, Chief
Engineering Access Permits
Division

BS/

My telephone number is
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2266 TDD/VOIP
Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 787 North Calvert Street • Baltimore, Maryland 21202

TO: Arnold Jablon, Director
Zoning Administration and
Development Management
DATE: February 14, 1994

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee



The Office of Planning and Zoning has no comments on the following petition(s):

Item Nos. 291, 293 and 298.. 94-301-SPI

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 867-3480.

Prepared by: *Jeffrey W. Long*

Division Chief: *Cary L. Lemo*

PK/MLW

ZAC 291/PDOME/EACI



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 867-4500

DATE: 02/03/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: SEE BELOW

Item No.: SEE BELOW

Zoning Agency:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time FOR THE FOLLOWING "ITEM NUMBERS": 285, 289, 291, 292, 293, 294 AND 298.



REVIEWER: LT. ROBERT P. SAUERWALD
Fire Prevention, PHONE 567-4881, MS-1102F

cc: File



94-301-SPI

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Larry R. Schmidt
Zoning Commissioner
DATE: February 1, 1994

FROM: James H. Thompson - TP
Zoning Enforcement Coordinator

SUBJECT: ITEM NO.: 298
PETITIONER: John S. Donaldson

VIOLATION CASE NO.: C-94-746

LOCATION OF VIOLATION: 10 York Road
Towson, Maryland 21204
9th Election District

DEFENDANTS: John S. Donaldson
1909 Sleepy Hollow Lane
Annapolis, Maryland 21401-1049

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s):

NAME: ADDRESS:
Mr. Attilio Broderick 107 Margaret Avenue
Baltimore, Maryland 21221

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

JHT/TP/bak

Re: 94-301

Notify of new hearing date:

Jean Huff 61 Burke Ave Towson 21286
Betsy Kahl 61 Burkshire Ave. Towson 21286
JOHN FREDERICK 5 E. BURKE TOWSON 21286
FREDERICK V. HATER 3 E. BURKE 21286
BETH CALVERT Per T. ROGERS HARRISON 105 W. Chesapeake Towson 21204

Ned Sticker

111 West Chesapeake Avenue
Towson, MD 21204

(410) 867-3353

MARCH 18, 1994

NOTICE OF REASSIGNMENT

CASE NUMBER: 94-301-SPI (Item 298)
10 York Road
B/E York Road, 49.34' SW of c/l Burke Avenue
9th Election District - 4th Councilmanic
Petitioner(s): John and Emily Donaldson

Special Hearing to approve the non-conforming use of this property as a two-apartment dwelling.
HEARING: MONDAY, APRIL 18, 1994 at 9:30 a.m., Rm. 118 Old Courthouse.

Carl Jan

ARNOLD JABLON
DIRECTOR

cc: T. Rogers Harrison
Frederick V. Holter John Frederick
Betsy Kahl
Jean Huff
file copy

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

T. Rogers Harrison
James W. Harrison
John Donaldson

ADDRESS

PLEASE PRINT CLEARLY

PROPERTY(S) SIGN-IN SHEET

XX Jean Huff (Jean Huff)
Betsy Kahl (Betsy Kahl)
John Donaldson (John Donaldson)
Mary H. Smith
Suzanne Walther
Charles Walther
James HRESKO
David Hater

ADDRESS

61 Burke Ave.
61 Burkshire Rd. 21286
60 Burkshire Rd.
54 BURKS HITE RD.
66 Burleigh Rd.
66 Burleigh Rd.
11 York Rd.
3 E. BURKE



Deed History
10 Burkleigh Square (also known as 10 York Rd.)
Towson, Maryland

Date	February 26, 1935
Liber\Polis	948\510
Grantor	Colonial Mortgage Company
Purchaser(s)	Mr. Frank Fitzpatrick and wife Julia
Amount	No amount given in deed
Mortgage if any	
Misc. info	Julia Fitzpatrick passed away between purchase of this property its sale in 1950

Date	December 12, 1950
Librarian	192544
Grantor	Mr. Frank Fitzpatrick (widower)
Purchaser(s)	Mildred S. Nail
Amount	\$500.00
Notarize if any	
Misc. info	Mildred S. Nail passed away May 3, 1955. The property was sold at public auction by the Executor of the Last Will and Testament

Date	June 11, 1955
Liberal/Folio	1766\461 3rd paragraph
Grantor	Murray MacNabb, executor
Purchaser	Julia E. Dolinar
Amount	\$12,625

Date	August 25, 1955
Libert/Volio	2766\461 (same as above)
Grantor	Murray MacNabb, for M. Naill; Julia Dollnar
Purchaser(s)	Mr. Frank Kocher, Eva Kocher (wife)
Amount	\$22,625

Mortgage of and
Misc. Info

The sale of the property was between three parties with the third party (Mr. and Mrs. Kocher) paying the entire sum of \$12,625 directly to Mr. MacNabb, executor. Frank Kocher passed away October 5, 1955 approx. one month after this purchase

Date	December 28, 1972
Liber/Folio	5327/394
Grantor	Two guardians for Eva Kocher (Frank deceased)
Purchaser(s)	Horace P. Lane, Julia P. Lane (wife)
Amount	\$22,000
Mortgage if any	
Misc. info	One guardian for Mrs. Kocher was Henry Kocher

Date	May 13, 1977
Liberal\Fuller	5753520
Grantor	Horace P. Lane, Julia P. Lane
Purchaser(s)	Julia P. Lane
Amount	\$5.00
Mortgage if any	
Misc info	Basically, husband sold the home to the wife for a very small amount of money.

Date	August 1, 1979
Liber/Folio	6058/248
Grantor	Julia P. Lane
Purchaser(s)	Robert B. Hanson, Virginia Lee Hanson (wife)
Amount	\$52,000
Mortgage if any	Mortgage for \$53,000
Misc. info	Held by Beulah S.T. Monk of North Carolina Mortgage amount is greater than purchase price.

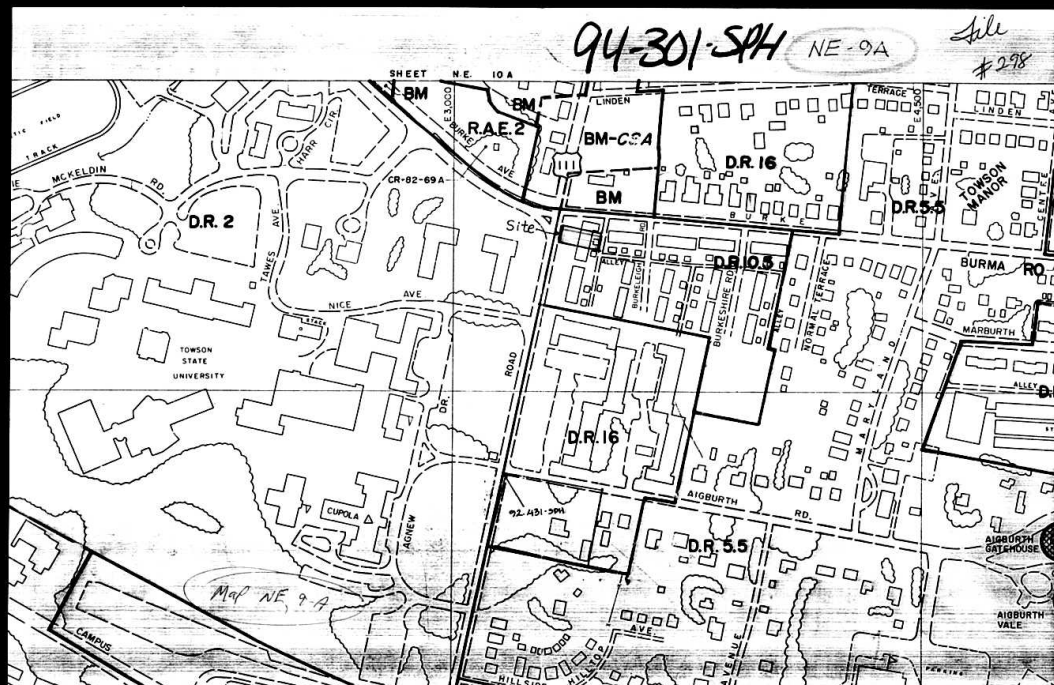
Date December 1981
Liber\Folio 9282\554
Mortgage Beulah S.T. Monk released the mortgage for \$1

Date	December 1, 1981
Liber\Folio	6351\739
Grantor	Robert B. and Virginia Lee Hanson
Purchaser(s)	John S. Donaldson, Emily T. Donaldson (wife)
Amount	\$60,000
Mortgage	\$52,000
Misc.	Stated mortgage is a commercial loan.

This history of the deeds for 10 York Road was taken from the Baltimore County Land Records. I tried to be as accurate as possible but I am not by any means an expert at reading deeds and therefore may have made unintentional errors in my research. To the best of my knowledge, the information given above is correct.

Jean E. Huff 61 Burke Ave.

Jan E. Huff 3/8/94



Protestant's
Ex. 2A-2D
94-301-5PK

