

May 11, 2010

Edward J. Gilliss, Esquire
Royston, Mueller, McLean & Reid, LLP
102 West Pennsylvania Avenue, Suite 600
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NE/S Skidmore Court, 335' NE of c/line Radcliff Road
(16 Skidmore Court)
9th Election District - 5th Council District
16 Skidmore Court, LLC - Petitioner
Case No. 2010-0133-SPH

Dear Mr. Gilliss:

This letter shall be considered an Order denying your Motion for Reconsideration. I have considered each of the three (3) arguments presented in your Memorandum and understand your position. Essentially, the overriding objective in creating 16 Skidmore Court, LLC was to provide a means for others to reside in the townhouse while affording a useful way to meet mortgage obligations. From September 21, 2007 through December 30, 2008, the evidence shows that four (4) individuals took up residency, although Stephen and Brian Vetter were the only LLC members meeting the B.C.Z.R. definition of "owner".

Name and Address of Taxpayer	Initial Cash Capital Contribution	Percentages
Stephen G. Vetter 1749 Broadlee Trail Annapolis, MD 21401	Contribution of 50% interest in property	50%
Brian Vetter 16 Skidmore Court Towson, MD 21204	Contribution of 50% interest in property	50%

Next, the Amended and Restated Operating Agreement of December 30, 2008 admits Steve Plimack as a "Class B Member" with ownership interests in the LLC designated as follows:

Name and Address of Taxpayer	Initial Cash Capital Contribution	Percentages
Stephen G. Vetter 1749 Broadlee Trail Annapolis, MD 21401	Contribution of 50% interest in property	37%
Brian Vetter 16 Skidmore Court Towson, MD 21204	Contribution of 50% interest in property	37%
Steve Plimack 16 Skidmore Court Towson, MD 21204	\$1.00	26%

At this point in time, Brian Vetter and Steve Plimack are persons who ... have more than a 25% interest ... residing at the property. Again, evidence would denote four (4) or five (5) Towson University students occupying the home.

After the effective date of the *New Legislation* – Council Bill 17-09 on April 19, 2009, comes another Amendment to Operating Agreement, dated May 14, 2009. This act was taken to admit Joe Wascavage as a “Class B Member” with revised ownership interests as follows:

Name and Address of Taxpayer	Initial Cash Capital Contribution	Percentages
Stephen G. Vetter 1749 Broadlee Trail Annapolis, MD 21401	Contribution of 50% interest in property	24%
Brian Vetter 16 Skidmore Court Towson, MD 21204	Contribution of 50% interest in property	24%
Steve Plimack 16 Skidmore Court Towson, MD 21204	\$1.00	26%
Joe Wascavage 16 Skidmore Court Towson, MD 21204	?	26%

Clearly, the *Previous Legislation* required more than ... a 25% legal or equitable interest in the property to be an owner. The most recent amendment has Plimack and Wascavage replacing the Vettors with two (2) new tenants, Messrs. Pastrick and Catalano, moving to the LLC property.

These repeated changes to the LLC’s structure and membership cause me some concern. While I certainly appreciate the skilled advocacy on your client’s behalf, I am also bound to interpret and apply the zoning regulations to achieve the laudable goals intended by the County Council. Here, the boarding house regulations were specifically amended to close a perceived loophole, and I am reluctant to issue an opinion which would be antithetical to that goal. Although I believe denying the Petition here is an equitable and just result, Maryland law also

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provides support for the proposition that an entity's corporate structure can be disregarded to "enforce a paramount equity", in this case the surrounding community's welfare. *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*, 275 Md. 295, 310 (1975) (in proper case courts will disregard corporate entity and deal with substance rather than form).

Aside from the above, there is one other troublesome aspect of your clients' position. The controlling zoning law at the heart of this controversy is not the definitional sections of the B.C.Z.R., but the Special Regulations applicable to boarding or rooming houses incorporated in Section 408B. That section (put into effect in 1993) preceded Council Bill 17-09 and states in pertinent part:

"Notwithstanding any provision in these regulations to the contrary, boarding – or rooming houses are permitted in D.R. zones, subject to the following provisions of this section."

Pertinent here, and set forth in my Order of April 2, 2010 is B.C.Z.R. Section 408B.1.B that clearly states:

"Boarding or rooming houses are permitted *only in single-family detached dwellings*". Emphasis Added.

This is the specific regulation that governs boarding or rooming house uses. It precludes a boarding house use at this location under any scenario. To achieve the status of a "non-conforming use" based solely upon the interpretation of the definitional section contained within the regulations, without giving deference to the "Special Regulations", would be inconsistent with the spirit and intent of the B.C.Z.R. Based on these facts, I find 16 Skidmore Court, LLC did not achieve the status of a lawful non-conforming use prior to County Council Bill 17-09.

Any appeal from this decision must be filed within thirty (30) days from the date of this letter/Order. I am sorry I cannot respond more favorably.

Very truly yours,

SIGNED

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Stephen G. Vetter, 1749 Broadlee Trail, Annapolis, MD 21401
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People's Counsel; Mike Mohler, DPDM; File