

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
N side of Wilkens Avenue, 365' W of the	*	OFFICE OF ADMINISTRATIVE
c/line of W Kenwood Avenue		
<b>(5210 Wilkens Avenue)</b>	*	HEARINGS FOR
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	BALTIMORE COUNTY
Abdul Hassan	*	<b>CASE NO. 2012-0146-SPHA</b>
<i>Petitioner</i>		

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owner of the property, Abdul Hassan. The Petitioner is requesting Special Hearing relief under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a use permit to operate a rooming/boarding house with a maximum of six (6) tenant beds, per Section 408.B.1 of the B.C.Z.R. In addition, Petitioner is requesting Variance relief from Sections 409.6.A.1 and 409.4.A of the B.C.Z.R. to permit two (2) on-site parking spaces in a garage in lieu of the required six (6) spaces and a 14 feet drive aisle in lieu of the required 20 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing held for this case was Bernadette Moskunas with Site Rite Surveying, Inc., the consultant who prepared the site plan. The Petitioner did not attend the hearing, but did call the Office of Administrative Hearings at 3:00 p.m. on January 24, 2012, and stated he could not attend the hearing because he could not get off from work. Several citizens attended the hearing (their names are included on the sign-in sheet which is contained in the record of this case) and all but one voiced strong opposition to the requests. James Hollyer, who resides at the subject premises and is a student at UMBC, also attended the hearing. The file reveals that

the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

This matter is currently the subject of a violation case (Case No. CO-00101748) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioners are entitled to the requested special hearing relief.

The ZAC comments were received and made a part of the file. Comments were received from the Department of Planning, dated January 10, 2012, which state as follows:

“The Department of Planning has reviewed the petitioner’s request and accompanying site plan. This department recommends denial of the petitioner’s request. The two-car garage referenced in the petition is being used for storage. At present, there isn’t sufficient room in the garage to provide any required parking spaces. The proposed use will over-crowd the site with parked cars and inadequate driveway width for multiple vehicle movement and storage.”

The subject property is 36,432 square feet (0.84 acres) and is zoned DR 3.5. The property is improved with a single family dwelling, and currently has six tenants, and it is situated a short distance from UMBC and the CCBC.

Under the B.C.Z.R., a boarding house (at least in these circumstances, where Petitioner does not reside on the premises) is a building occupied (for compensation) by three or more individuals who are not related to each other by blood, marriage or adoption. B.C.Z.R. § 101.1. The dwelling at 5210 Wilkens Avenue is therefore a “boarding house,” given that six tenants reside therein. The procedure to obtain approval for a boarding house in a residential zone is

found in § 408B of the B.C.Z.R.

That regulation requires that the applicant demonstrate the use will be consistent with the surrounding community, and that the operation of the boarding house will satisfy the special exception standards set forth at B.C.Z.R. § 502.1. In this case, the Petitioner failed to present any evidence or testimony concerning how the operation of the boarding house would satisfy the numerous requirements and standards set forth in B.C.Z.R. § 502.1. The only “evidence” presented in Petitioner’s case was the site plan, admitted as Exhibit 1. Ms. Moskunus presented the plan, testified she created the document, and authenticated and verified its contents. She specifically stated that would be the extent of her testimony, and she did not address the B.C.Z.R. § 502 factors or any other aspect of the case.

The zoning regulations impose numerous requirements in cases of this nature, and the Petitioner has simply not presented a sufficient case. I am constrained by the law in this scenario, and am unable to approve the request unless the requisite showing has been made.

I am, however, sympathetic to the plight of the college students now residing at the premises. They moved to the premises in August 2011, and did not know that County zoning regulations prohibited such an arrangement. Mr. Hollyer said that on the morning of the hearing in this case, he and the other tenants were served with a letter from Petitioner’s attorney indicating they would soon be evicted from the premises. There is of course nothing I can do about that, which is a private civil matter for the District Court. As for Baltimore County’s involvement, this Order (assuming it is not appealed) would be enforced by the Department of Permits, Approvals and Inspections (not this Office), and I hope that agency (and the community) would be amenable to some sort of “grace period” which would allow these students to locate alternative housing arrangements.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED, this   30   day of January, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing relief under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a use permit to operate a rooming/boarding house with a maximum of six (6) tenant beds, per Section 408.B.1 of the B.C.Z.R, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to Sections 409.6.A.1 and 409.4.A of the B.C.Z.R. to permit two (2) on-site parking spaces in a garage in lieu of the required six (6) spaces and a 14 feet drive aisle in lieu of the required 20 feet, be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:pz