

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(716 Scarlett Drive)		
9 th Election District	*	OFFICE OF
5 th Councilmanic District		
Derek Ecolono	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2015-0058-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Derek Ecolono, legal owner. The Special Hearing was filed pursuant to § 408.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a Rooming/Boarding House.

Appearing at the public hearing in support of the requests was Derek Ecolono, represented by Jonathon Herbst, Esq. Numerous members of the community attended the hearing and opposed the Petition, and their names are reflected on the sign-in sheets. C. William Clark, Esq., represented the Protestants. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP). That agency did not support or oppose the request, but suggested certain conditions to be included if the Petition was granted.

The subject property is zoned DR 3.5. The property is approximately 10,000 square feet in size, and is improved with a single family dwelling constructed in 1956. Petitioner proposes to have his daughter and three of her friends reside in the home, which under the B.C.Z.R. would constitute a boarding or rooming house. Such a use is permitted in a single family dwelling

provided the applicant satisfy the special exception standards set forth at B.C.Z.R. §502.1 and a variety of other requirements listed in §408B.1.

Boarding house cases usually generate a great deal of interest and community involvement (opposition) and this case was no exception. The owner's parents were the original owners of the home, and Mr. Ecolono described the property and his fondness for and memories of the neighborhood. Each of the four tenants testified and described the improvements they made to the home. They each said the property feels like a "home," not a boarding house.

The community vehemently opposes the request. Tammy Bollinger, President of the Campus Hills Community Association (consisting of 369 single family dwellings), testified the Association voted against the request at its October 2014 meeting. She also stated the neighborhood covenants (Protestant's Exhibit 3) permit only dwellings for single families (not unrelated adults), and she worried that a boarding house would cause a decline in property values and "open the door" to other such uses in the community. Several other community members expressed similar concerns.

The case presents a variety of legal issues, including whether or not the covenants are relevant in this proceeding. While it appears the covenants are recorded among the Baltimore County land records, and would be enforceable in a private civil action in circuit court, they cannot be considered in the context of this zoning case. In Blakehurst Life Care Community v. Baltimore County, 146 Md. App. 509, 520-21 (2002), the court stated the general rule that an administrative agency (like the Office of Administrative Hearings) does not have authority to interpret and/or enforce a private covenant agreement. As such, I will not consider the covenants admitted as Protestant's Exhibit 3.

The other legal issue concerns the sufficiency of the site plan, which was admitted as Petitioner's Exhibit A. This exhibit does not depict the location of dwellings on adjacent lots, nor does it specify the location and dimensions of the required off-street parking (4 spaces are required per B.C.Z.R. §409.6.A.1, 1 per tenant bed). Upon review of the case file, it appears Petitioner submitted with the Petition a more detailed site plan containing a vicinity map and additional details as required by B.C.Z.R. §408B.1.A.1. But this plan was not offered as an exhibit in this case.

Even if I were to consider the more detailed site plan, it is nonetheless deficient and not in compliance with the regulations. That plan does not show the length of the existing "paved drive," nor does it include the dimensions for and precise location of the required four (4) off-street parking spaces. B.C.Z.R. §§ 409.2 & 409.3. The plan indicates the driveway is 9 feet wide, but the regulations require it to be a minimum of "12 feet in width." B.C.Z.R. §409.4.A. While these requirements could be modified if variance relief was granted, such a petition was not filed in this case.

As such, the Petition will be denied based on these deficiencies, and I will therefore not address whether or not Petitioner has satisfied the special exception standards. I recognize that this disposition will create a hardship for the four (4) residents, each of whom considers the property to be their "home," and each one is employed in the vicinity as well. To mitigate this harsh result and to provide ample time for them to secure housing, Petitioner (and by extension, the tenants) will be given a six (6) month grace period in which to comply with the zoning regulations.

THEREFORE, IT IS ORDERED this 20th day of November, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7, be

and is hereby DENIED.

IT IS FURTHER ORDERED that Petitioner shall have six (6) months from the date hereof in which to bring the property into compliance with the zoning regulations.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln