

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY

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CASE NO. AAO-15-02

HEARING EXAMINER'S OPINION AND DECISION DENYING THE OBJECTION OF APPLICANT EVRIDIKI CHALASOCHORIS TO THE FINDINGS OF DHCA ON AN ACCESSORY APARTMENT LICENSE APPLICATION

I. STATEMENT OF THE CASE

On November 20, 2014, Vasilios and Evridiki Chalasochois filed an application with the Department of Housing and Community Affairs (DHCA), seeking a Class III Accessory Apartment Rental License (License Application No. 85801) for their single family home, which is Lot 11, Block 3, Subdivision 014, located at 15026 Snowden Drive, Silver Spring, Maryland, in the R-200 Zone (Tax Account Number 05-00311393). See Exhibit 1.

The property was inspected by DHCA Housing Code Inspectors Robert Goff and/or Lauren Cary on November 13, 2014, November 18, 2014 and December 9, 2014. Housing Code violations were observed by the DHCA personnel on each of these inspections (See Notes of the Housing code Inspectors in Exhibit 17).

On December 23, 2014, the Director of DHCA issued a "Report of Findings," listing non-compliance with some of the applicable requirements and disapproving the accessory apartment license (Exhibit 13).¹ The specifics of the denial were set forth in a letter dated December 23, 2014, from Ada DeJesus of DHCA to the Applicants (Exhibit 5), noting three issues of noncompliance – 1. Having two separate accessory apartments; 2. Having cooking appliances in the second accessory apartment unit; and 3. Not having the notice sign posted as required.

On January 23, 2015, Evridiki Chalasochois filed a formal Objection to the decision of the DHCA Director with the Office of Zoning and Administrative Hearings for Montgomery County (OZAH).² It was assigned OZAH Number AAO 15-02 (Exhibit 10). The only issues

¹ The Director's findings were not posted to the DHCA website until February 10, 2015. Prior to that date, a letter from Ada DeJesus of DHCA to the Applicants (Exhibit 5) explaining the reasons for denial was posted on the DHCA website.

² Code §29-26(b)(3) provides that "A request for a review by the Hearing Examiner must be submitted to the Office of Zoning and Administrative Hearings within 30 days after the date of the Director's report . . ." The Objection in this case was filed on the 31st day after the Director's finding was issued, and therefore may have been untimely; however, as noted above, the Director's finding was not posted on the DHCA website until February 10, 2015, and

raised by the instant objection are: “I was not treated fair, never show up for inspection appoint. on 23 December 2014.”

At the request of the Objector, the hearing in this case was delayed until after March 10, 2015 (Exhibit 11), and notice of a hearing on the objection was issued, as required by County Code §29-26, on March 2, 2015 (Exhibit 14), scheduling the hearing for March 27, 2015.

The hearing proceeded as scheduled on March 27, 2015. The Objector, Evridiki Chalasochoiris appeared with her son, Antonio Chalasochoiris. DHCA Housing Code inspectors, Robert Goff and Lauren Cary, also appeared at the hearing. There were no other witnesses.

At the hearing, Housing Inspectors Goff testified that the property failed to meet the statutory requirements because more than one accessory apartment was present on the premises and there were cooking appliances in the second accessory apartment unit. Tr. 15-20. A former tenant, Margaret Whitehead, called on December 8, 2014 to complain about the second tenant in the building. Exhibit 17. Mr. Goff testified that as a result of that call, he and Ms. Cary returned for another inspection on December 9, 2014. They were accompanied by Montgomery County police officer (Officer Sharif Hidayat) who submitted a statement indicating that he observed “at least two accessory apartments in the house being occupied by tenants . . .” Exhibit 17(a). The second tenant, Mr. Yezid Antonio Morales, told Mr. Goff that he was paying \$1,100 per month in rent for the apartment. Tr. 16-17 and Exhibit 17.

Although the Housing Code Inspectors had initially advised the Applicants that there would be another inspection on December 23, 2014 (Tr. 8-9 and Exhibit 20), they actually conducted the final inspection on December 9, 2014, and Mr. Goff left a voicemail for the Chalasochoiris family indicating that he would not be back on December 23. Tr. 18. When Mrs. Chalasochoiris called on December 23 at 10:30 a.m., Mr. Goff told her directly that inspectors would not be out on that date and he explained why. Tr. 18-19.

Antonio Chalasochoiris testified for the Objector. He admitted that there were cooking appliances in the second accessory apartment unit, but indicated that those were present in violation of the family’s instructions to Mr. Morales who was staying there to help with construction. He denied that Mr. Morales actually was a tenant paying rent. Tr. 8-14, 34-45.

He also introduced an “affidavit”³ from Mr. Morales (Exhibit 21) indicating that he was not actually paying rent, but rather was a “guest” and was just considering renting for \$1,100 per month after the owners obtained a rental license.

Exhibits 1 through 21 were admitted into evidence, and the record closed at the conclusion of the hearing.

II. FINDINGS AND CONCLUSIONS

thus the Objection was filed with OZAH even before that date. If the Objection is untimely, that issue is mooted by the Hearing Examiner’s decision denying the objection on the merits.

³ There was no notary seal on the Morales “affidavit,” but the Hearing Examiner will consider it as a hearsay statement in the same way he will consider Officer Hidayat’s hearsay statement (Exhibit 17(a)).

Section 29-26(b)(1) of the code provides that: “The applicant for a new license for an accessory apartment may object to an adverse finding of fact by the Director by filing an objection . . .” Section 29-26(b)(5) limits what OZAH may decide, providing: “The Hearing Examiner may only decide the issues raised by the objection.”

In this case, the only objection made was to the fairness of the process, the Objector contending that DHCA inspectors did not return for a December 23, 2014 inspection as promised. That contention was rebutted by Mr. Goff’s testimony that he actually did leave a voice mail message for the family that DHCA inspectors would not be back because they had inspected a third time on December 9, 2014. He also so advised Mrs. Chalasochois directly when she called on December 23, 2014. Tr. 16-19.

It is undisputed in this case that even on the third inspection, which took place on December 9, 2014, there were cooking appliances in the second accessory apartment unit, a Code violation. Whether or not Mr. Morales was actually paying rent, the Hearing Examiner finds that the Housing Code Inspectors reasonably believed that he was a tenant in the second apartment.

The Hearing Examiner further finds that DHCA did not treat the Applicant unfairly in its inspection process, in that they inspected the premises three times, and it is undisputed that cooking paraphernalia remained in the second apartment even at the third inspection on December 9, 2014. Moreover, the Housing Code Inspectors left word that they would not return on December 23, 2014. Tr. 16-19.

In sum, there was no evidence presented in this case that would justify granting the Applicant’s objection. The Objection will therefore be denied. According to Ada DeJesus of DHCA, a homeowner (applicant) can reapply for an accessory apartment license by requesting reinstatement. Exhibit 18. To do so, the Applicant must complete a Reinstatement of License Application Request, Explanation Request Form, and payment (All fees apply). The request will be reviewed by DHCA, and a written notification of decision will be mailed to the Applicant. Ms. DeJesus noted that drawings with dimension are required, and a preliminary and final inspection will be conducted.

III. DECISION

Accordingly, based on the foregoing findings and conclusions, **the *Objection of Applicant Evridiki Chalasochois*, OZAH # AAO 15-02, to the denial of License Application # 85801 for an Attached Accessory Apartment is denied. The report and findings of the Director of the Department of Housing and Community Affairs (Exhibit 13), dated December 23, 2014, denying an attached accessory apartment license for the lower level of a one-family, detached home at 15026 Snowden Drive, Silver Spring, Maryland, are hereby upheld.**

Dated: April 9, 2015

Office of Zoning and Administrative Hearings

by: 

Martin L. Grossman
Director/Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any aggrieved party who objected under Subsection 29-26(b) may request the Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Procedure. An appeal to the Circuit Court does not automatically stay the Director's authority to grant a license.

cc: Evridiki Chalasochoris
Vasilios Chalasochoris
Antonio Chalasochoris
Clarence Snuggs, DHCA
Dan McHugh, DHCA
Ada DeJesus, DHCA
Robert Goff, DHCA
Lauren Cary, DHCA