

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
for  
MONTGOMERY COUNTY**

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**CASE NO. AAO-17-01  
OBJECTIONS TO FINDINGS IN THE DHCA DIRECTOR'S REPORT ON ACCESSORY  
APARTMENT LICENSE APPLICATION # 92918 OF LILLIAN CLARY**

**HEARING EXAMINER'S OPINION AND DECISION**

**OPINION**

In May, 2013, the Montgomery County Council established procedures for licensing accessory apartments in the County, which are now contained in *Montgomery County Code*, §§29-19 and 29-26. The procedures require an applicant for an accessory apartment to apply to the Department of Housing and Community Affairs (DHCA) for an accessory apartment license. After an inspection of the property, the DHCA Director must enter its preliminary findings regarding the application. A license applicant or an aggrieved party may challenge DHCA's preliminary or "conditional" findings by filing an objection with the Office of Zoning and Administrative Hearings for Montgomery County (OZAH) within 30 days after the DHCA Director issues his findings. *Code* §29-26. Under County Code §29-26, OZAH may decide only the issues raised in the objection.

On or about March 23, 2017, Lillian Clary filed an application with DHCA seeking a Class III Accessory Apartment Rental License (License Application No. 92918) to locate an accessory apartment at 1603 Ladd Street, Silver Spring, Maryland 20902, which is in the R-90 Zone.

The Director of DHCA issued a "Report of Findings" (Exhibits 1, 8) listing the Director's finding as "PE," presumably meaning that the DHCA Director's license approval was still pending. A notation of "finding conditional" is hand written on the report, although there is no indication of who made the notation or on what date the findings were made. E-mails in the record indicate that the finding may have been on May 18, 2017. Exhibit 8.

On June 8, 2017, Dr. Dana Best and Mr. Malcolm Wilson filed two separate objections to the Director's findings. Dr. Best alleged that the owner does not live on the premises, as required by Section 29-19 of the County Code, and that there is an abundance of parked cars in the area. Exhibit 5. Mr. Wilson alleged that there is another accessory apartment less than 300 feet from the subject property, in contravention of Section 59-3.3.3.B.2.d. of the Montgomery County Zoning Ordinance.

OZAH scheduled a public hearing for June 26, 2017. Exhibit 10. The hearing was subsequently postponed to July 14, 2017, by agreement of the parties. Exhibits 12-14. On July

10, 2017, DHCA notified OZAH that Ms. Clary had withdrawn her application for an accessory apartment license as of June 27, 2017. Exhibit 15. Ms. Clary confirmed this to OZAH on July 11, 2017. Exhibit 16.

Because Ms. Clary has withdrawn her application for an accessory apartment license for the subject property, the objections are now moot. When developments after a case has been filed render a case moot, the appropriate remedy is dismissal. *Arundel Corp. v. Board of Zoning Appeals*, 255 Md. 78, 257 A.2d 142 (1969). Based on the Hearing Examiner's findings, the DHCA Director will enter the application as denied based on withdrawal, and all the pending objections must therefore be dismissed as moot.

### **DECISION**

Accordingly, based on the foregoing findings and conclusions, the Director of Department of Housing and Community Affairs must enter License Application 92918 for an Attached Accessory Apartment at 1603 Ladd Street, Silver Spring, Maryland 20902, as withdrawn by the Applicants, and therefore denied.

Based on the Applicants' withdrawal of the application and required denial by DHCA, all objections contained in OZAH Case # AAO 17-01, to License Application # 92918 are hereby dismissed as moot.

Dated: July 14, 2017

Office of Zoning and Administrative Hearings

by: 

Lynn A. Robeson  
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:

Lillian Clary  
Dana Best  
Malcolm D. Wilson  
Clarence Snuggs, Director, DHCA  
Dan McHugh, DHCA  
Sheila Price, DHCA  
Francene Hill  
Cece Kenna, DHCA