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Transcript of Administrative Hearing

Date: June 23, 2017

Case: Objection to DHCA Accessory Apartment, License Application of Louise Yagher

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<p style="text-align: center;">1</p> <p style="text-align: center;">OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS FOR MONTGOMERY COUNTY, MARYLAND</p> <p>-----x</p> <p>In Re: :</p> <p>Objection to DHCA Accessory : Apartment, License :</p> <p>Application of Louise Yagher : -----x</p> <p style="text-align: center;">HEARING</p> <p style="text-align: center;">Before Hearing Examiner Martin Grossman Rockville, Maryland Friday, June 23, 2017 9:39 a.m.</p> <p>Job: 149874 Pages: 1 - 11 Transcribed by: Susan E. Wilson</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>MARTIN GROSSMAN: We call the case. Court reporter ready? Do we have the applicant here? No. I see we have some objectors. Ms. Kenna from housing here? Alright. This is a public hearing in the matter of OSA number AA0 17-02 an objection timely filed on June 7th 2017 by 8 neighbors to the DHCA Directors Findings in an attached accessory apartment license application number 95591 Louis and Steven Yagher. The director's findings are outline in a report by the Department of Housing and Community Affairs Directors issued on May 8th 2017. The application seeks a license for an accessory apartment in the basement of a 1 family detached home at 902 Loxford Terrace Silver Spring Maryland, in the R60 zone. The property is identified as lot 28 block M of subdivision 0102. Tax account number 01351510. The objections were timely filed by John Wilson, Kathleen Waybright, Nichole Waybright, Christopher (inaudible), Penny Kline, Rodrick Wilbon, Kevin (inaudible), and Peter Sullivan. Three of the neighbors; Marsha (inaudible), Andrea (inaudible), and Carlos (inaudible) filed objections after the 30 day deadline. The central objection is the assertion that the subject site is not actually the primary residence of the applicants Louis Yagher and Steven Yagher. This hearing is conducted</p>						
<p style="text-align: center;">2</p> <p style="text-align: center;">C O N T E N T S</p> <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: right; width: 20%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>TESTIMONY OF MR YAGHER</td> <td style="text-align: right;">9</td> </tr> <tr> <td>JUDGE'S RULING</td> <td style="text-align: right;">9</td> </tr> </tbody> </table>		PAGE	TESTIMONY OF MR YAGHER	9	JUDGE'S RULING	9	<p style="text-align: center;">4</p> <p>pursuing to Count Code section 29-16, 29-19, 29-26, and 2014 Zoning Ordinance section 59.3.3.3 and 2004 Zoning Ordinance section 59A6.20. My name is Martin Grossman. I am the Hearing Examiner which means I will conduct the hearing. I will take evidence here and write a report and a decision in the case. Notice of this hearing was issued as required by code section 29-26 on June 12th 2017 within 5 business days after the objection was received. The hearing was scheduled as required by code section 29-26 within 20 days after the objection was filed. Alright. Will the parties identify themselves please? So we still do not have the applicant here? Then will the objectors come forward. You can come forward if you want to have, you can pull some of those extra chairs. Ok will you identify yourselves please sir?</p> <p>Roderick Wilbon: Roderick Wilbon. MARTIN GROSSMAN: Ok Mr. Wilbon. Carlos Jimenez: Carlos Jimenez. MARTIN GROSSMAN: Alright. Mr. Jimenez. JOHN WILSON: John Wilson. MARTIN GROSSMAN: Mr. Wilson. PENNY KLINE: Penny Kline. MARTIN GROSSMAN: Ms. Kline. KATHLEEN WAYBRIGHT: Kathleen Waybright. MARTIN GROSSMAN: Ok, Ms. Waybright. Ms. Kenna?</p>
	PAGE						
TESTIMONY OF MR YAGHER	9						
JUDGE'S RULING	9						

Transcript of Administrative Hearing
Conducted on June 23, 2017

<p style="text-align: right;">5</p> <p>1 CECE KENNA: CeCe Kenna with Housing Code Enforcement. 2 MARTIN GROSSMAN: Ok. Ms. Kenna have you heard from 3 either applicant Mr. or Mrs. Yagher? 4 CECE KENNA: Not since I was out to do the preliminary 5 inspection. 6 MARTIN GROSSMAN: I actually had my office call Mr. 7 Yagher a few days ago because we realized that from seeing 8 your report Ms. Kenna that the place was vacant where we 9 had sent the notice because that is supposed to be the 10 primary residence. So I want to make sure that you got 11 notice so that my staff talked to him told him about the 12 hearing. Mr. Yagher asked if it could be postponed. I then 13 sent him an email and I copied all of you on email 14 addresses ahead saying that there wasn't enough time to 15 make sure that a written notice of a postponement got there 16 just the way they schedule the setup and the code. So I was 17 not going to continue the hearing but I did inform him that 18 the primary concern was this issue of whether or not either 19 applicant is the primary or will be the primary resident. 20 What I am going to do is I want to give him a little bit 21 more time to arrive. It is right now 9:45. So I am going to 22 give him until 10 o'clock to arrive just in case. Even 23 though the hearing was scheduled for 9:30. Under an 24 abundance of caution, let's give him until 10 o'clock. So I 25 am going to recess now and I will return at 10 o'clock. I</p>	<p style="text-align: right;">7</p> <p>1 of the applicant. Another objection raised was that the 2 applicant may seek to create a 2 bedroom accessory 3 apartment. That is not offensive to the code. The only, I 4 am just going to mention that other objection, it is also 5 not an issue raised in the directors, the DHCA Directors 6 Report. There are only 2 things that we can consider at 7 this type of objection proceeding. One is a challenge to a 8 finding of the DHCA Director and the other is something to 9 do with parking availability. Parking availability was not 10 an issue in this case. So that resolves itself to the only 11 issue really relevant here is the question of residency and 12 before I accept your statement- Yes Sir? 13 JOHN WILSON: Mr. Grossman, can I ask you about that 14 question because I read the code and it is not really clear 15 what the distinction is between an accessory apartment and 16 a duplex? 17 MARTIN GROSSMAN: Well an accessory apartment is a 18 very specifically defined type of use. It has nothing to do 19 with whether it is duplex or not. It has to do with the 20 fact that there are a whole set of criteria set forth in 21 the code. In the zoning ordinance for the most part 22 defining accessory apartments they have attached accessory 23 apartments which is what this would be. That is a room 24 inside of the house. Detached accessory apartments and so 25 on and then in the code that governs the housing department</p>
<p style="text-align: right;">6</p> <p>1 am sorry for the additional time. This shouldn't be a very 2 long hearing because it seems to be, it is centered around 3 that one issue. There was one other issue raised but I will 4 talk about that when I get back. That is at- Mr. Yagher by 5 any chance? 6 MR. YAGHER: Yeah. 7 MARTIN GROSSMAN: Oh great. I was just, Mr. Yagher see 8 if you can pull up a chair here so you have a seat at 9 council table. 10 MR. YAGHER: Can I just tell you that I spoke with my 11 mother this morning and she wants to stay at Leisure World. 12 So I am going to withdraw my application. 13 MARTIN GROSSMAN: Alright. Well that just shortened 14 proceedings. Have a seat though sir if you would. 15 MR. YAGHER: Ok. 16 MARTIN GROSSMAN: Alright. All I had done was call the 17 case. Mentioned the timing of the order and of the notice 18 and of the hearing schedule and I discussed the fact that 19 we had called you and indicated to you that the hearing 20 would go forward today and what the primary issue was and 21 that is as far as I had really gotten. So let me mention a 22 couple of other things here and as you say your statement 23 now may moot the issue but there were 2 issues raised in 24 the objections. The basic one which everybody raised was 25 that the subject site is not actually the primary residence</p>	<p style="text-align: right;">8</p> <p>1 there are other criteria that are specified. So it doesn't 2 really have to, it is not really a question of duplex. I am 3 not even sure, I would have to look as to whether or not a 4 duplex per say is eligible for an accessory apartment. Ms. 5 Kenna do you? 6 CECE KENNA: No. it would be under the situation of 7 like a townhome where they are not permitted. Duplex is 8 basically 2 separate residences that are attached. An 9 accessory apartment wouldn't meet that requirement because 10 it is subordinate to the main house. 11 JOHN WILSON: Right and I think the other concern was 12 really that this was in fact a duplex that was being 13 created was the intent and that was evidence by the fact 14 that it was represented as 400 square feet. I think the 15 more recent inspection showed that it is at least 700 16 square feet. So I think some sort of finding just for any 17 future application to discourage that kind of 18 misrepresentation would also be helpful. 19 MARTIN GROSSMAN: I don't know that there was a 20 misrepresentation and I don't want to go beyond what the 21 actual issues are that I can opine upon. In other words, I 22 am very severely restricted by the statute to those limited 23 2 things that I mentioned that I can look at a challenge to 24 finding by the housing the Department of Housing and 25 Community Affairs Director or to this parking issue which</p>

Transcript of Administrative Hearing
Conducted on June 23, 2017

<p style="text-align: center;">9</p> <p>1 is not an issue here and those and there is a determination 2 or a finding in the Directors Report regarding residence. 3 That is why it is an issue that can be raised here. 4 Alright. Let me do this before I accept your statement Mr. 5 Yagher. Let me swear in all the people who wish to be 6 witnesses today. So would you all raise your right hands 7 please? Do you swear or affirm to tell the truth, the whole 8 truth, and nothing but the truth under penalty of perjury? 9 CECE KENNA: I do. 10 JOHN WILSON: I do. 11 MR. YAGHER: I do. 12 MARTIN GROSSMAN: Alright. Now Mr. Yagher having 13 arrived late, you made a statement at the beginning. So 14 would you repeat what you said now under oath? 15 MR. YAGHER: We are going to withdraw the application 16 for the accessory apartment. 17 MARTIN GROSSMAN: Ok. So the and I believe the other 18 part of your statement was that neither your mother nor 19 yourself will be primary residents, that would not be the 20 subject site which is the address at 902 Loxford Terrace 21 Silver Spring Maryland will not be principle residents of 22 either yourself or your mother? 23 MR. YAGHER: That is correct. 24 MARTIN GROSSMAN: Alright. That obviously will moot 25 the issue. Does anybody else wish to say anything here</p>	<p style="text-align: right;">11</p> <p style="text-align: center;">CERTIFICATE OF TRANSCRIBER</p> <p>1 I, Susan E. Wilson, do hereby certify that the 2 foregoing transcript is a true and correct record of the 3 recorded proceedings; that said proceedings were 4 transcribed to the best of my ability from the audio 5 recording as provided; and that I am neither counsel for, 6 related to, nor employed by and of the parties to this case 7 and have no interest, financial or otherwise, in its 8 outcome. 9 10 11 12  13 _____ 14 Susan E. Wilson 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">10</p> <p>1 about this issue? Alright I wanted to give you the 2 opportunity even though this case obviously is mooted by 3 the withdrawal of the application to say something since 4 you did take your time to come down here today. Under the 5 ordinary process within 30 days after the record closes I 6 would issue a report and decision. In this case it will be 7 rather brief and then that is binding upon the Department 8 of Housing and Community Affairs. Any aggrieved party to 9 the proceeding can take an appeal to court thereafter. 10 Alright. Let's see if there is anything else we need to 11 address here. I don't think so. I think that pretty much 12 handles it. There isn't any point, I don't think, in 13 holding the record open here. So we will just close the 14 record here. We will await the transcript of proceeding 15 which contains the testimony but then my report will be 16 issued shortly thereafter. I thank you all for attending 17 and we are adjourned. 18 (Off the record at 9:51 a.m.) 19 20 21 22 23 24 25</p>	