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Transcript of Hearing

Date: April 13, 2023

Case: D. Munson Objection to ADU License # 149586 (ADO 23-04)

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1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
 2 MONTGOMERY COUNTY, MARYLAND
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 4 -----x
 5 In Re: : Case No.
 6 D. Munson Objection to ADU : ADO 23-04
 7 License #149586 :
 8 -----x
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 12 HEARING
 13 Before the Hearing Examiner - Andrea LeWinter
 14 Conducted Virtually
 15 Thursday, April 13, 2023
 16 9:30 a.m. EST
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 23 Job No.: 485978
 24 Pages: 1 - 18
 25 Recorded By: Socrates Matthews, AAERT CER

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1 HEARING, held virtually.
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 13 Pursuant to agreement, before Socrates Matthews,
 14 AAERT CER, Court Reporter.
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1 A P P E A R A N C E S
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 3 ON BEHALF OF THE MONTGOMERY COUNTY OFFICE OF
 4 ZONING AND ADMINISTRATIVE HEARINGS:
 5 NANA YAA JOHNSON
 6 MONTGOMERY COUNTY OFFICE OF ZONING AND
 7 ADMINISTRATIVE HEARINGS (1100167)
 8 100 Maryland Avenue
 9 County Office Building
 10 Room 200
 11 Rockville, Maryland 20850
 12 240.777.6660
 13 (Present via videoconference)
 14
 15 ALSO PRESENT:
 16 Yilma Betru - Applicant
 17 Ann Munson - Objector
 18 David A. Munson - Objector
 19 Austin McNamara - Housing and Community Affairs
 20 (DHCA)
 21 Juan Amenabar
 22 Clifton Bouma
 23
 24
 25

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1 C O N T E N T S
 2 TESTIMONY PAGE
 3 By Mr. McNamara 9
 4 By Mr. Betru 11
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 6
 7 DECISION PAGE
 8 By the Hearing Examiner 13
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 11 E X H I B I T S
 12 (None marked.)
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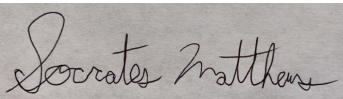
<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 (Whereupon, the court reporter was duly</p> <p>3 sworn.)</p> <p>4 MS. LEWINTER: Ass everybody I think</p> <p>5 is aware, simultaneous recording and that's going to</p> <p>6 be our -- our official source but as a backup, we</p> <p>7 use the Team's recording feature since it is</p> <p>8 available to us. This is a public hearing in the</p> <p>9 matter of OZAH, case number ADO 2304, an objection</p> <p>10 filed by David and Ann Munson pursuant to Montgomery</p> <p>11 County Regulation Section 29-26 B2. Objecting to</p> <p>12 the approval of the accessory dwelling unit at 3108</p> <p>13 Memory Lane, which was applied to by -- or applied</p> <p>14 for by Mr. Yilma Betru. And Mr. Betru, I apologize</p> <p>15 if I am not saying your name correctly.</p> <p>16 MR. BETRU: No problem, you said it all</p> <p>17 right.</p> <p>18 MS. LEWINTER: I said it all right?</p> <p>19 MR. BETRU: Yeah.</p> <p>20 MS. LEWINTER: All right. Feel free to</p> <p>21 correct me at any time.</p> <p>22 MR. BETRU: Okay.</p> <p>23 MS. LEWINTER: My name is Andrea LeWinter,</p> <p>24 and I am serving as the hearing examiner today. It</p> <p>25 is my role to listen, take evidence, and write a</p>	<p style="text-align: right;">7</p> <p>1 proceedings are informal with certain formalities.</p> <p>2 This is a remote hearing as we're all aware on the</p> <p>3 Microsoft Teams platform. So some things to keep in</p> <p>4 mind with respect to being a virtual hearing.</p> <p>5 Please do not interrupt while someone else is</p> <p>6 speaking unless you have an objection -- a formal</p> <p>7 objection. This is because the court reporter has</p> <p>8 difficulty understanding what people are saying when</p> <p>9 there is crosstalk. Please use the raise hand</p> <p>10 feature whenever possible. As I stated initially,</p> <p>11 this session is being recorded, and so as I also had</p> <p>12 stated previously, just to reiterate, it is -- the</p> <p>13 recording is a backup, the primary is the court</p> <p>14 reporter.</p> <p>15 What you say will be under oath and</p> <p>16 again recorded, you will -- maybe asked questions</p> <p>17 about your testimony and the proceedings will move</p> <p>18 forward in the following order. Any preliminary</p> <p>19 motions or issues, and I do -- I am aware of at</p> <p>20 least one. Opening statements, again if we get to</p> <p>21 that point by each side, but that is optional, it's</p> <p>22 only if you desire. The objector's case in chief,</p> <p>23 in this case Mr. And Mrs. Munson, with the</p> <p>24 opportunity for cross-examination by Mr. Betru. Mr.</p> <p>25 Betru's case in chief with the opportunity for</p>
<p style="text-align: right;">6</p> <p>1 decision regarding this case. I see on the Team's</p> <p>2 meeting, Mr. and Mrs. Munson, Mr. Betru, and I see no</p> <p>3 other individuals from the community, and we do have</p> <p>4 Mr. Austin McNamara from DHCA present. I do see now</p> <p>5 a phone number, I don't know, would the person whose</p> <p>6 phone number ends with 15 just identify themselves?</p> <p>7 MR. AMENABAR: That's Juan Amenabar from</p> <p>8 3060 Memory Lane.</p> <p>9 MS. LEWINTER: I'm sorry, can you say</p> <p>10 your name more slowly sir, I couldn't hear it?</p> <p>11 MR. AMENABAR: Yeah, so I'm on the phone.</p> <p>12 First name is Juan, J-U-A-N, last name is Amenabar,</p> <p>13 A-M-E-N-A-B-A-R.</p> <p>14 MS. LEWINTER: Okay. And you had</p> <p>15 submitted a letter; is that correct?</p> <p>16 MR. AMENABAR: Correct.</p> <p>17 MS. LEWINTER: Thank you. Okay. Mr.</p> <p>18 Amenabar, did you have an interest -- I don't know</p> <p>19 that we'll get to it today, but do you have an</p> <p>20 interest in testifying?</p> <p>21 MR. AMENABAR: Well, I submitted the</p> <p>22 letter as testimony, I do have some remarks to the</p> <p>23 response to that letter.</p> <p>24 MS. LEWINTER: Okay. So I'll take that</p> <p>25 as a yes if we get to that today. All right. These</p>	<p style="text-align: right;">8</p> <p>1 cross-examination by the Munson's. A presentation</p> <p>2 by Mr. McNamara, a presentation or testimony by any</p> <p>3 other interested parties, in this case that would be</p> <p>4 Mr. Amenabar. I apologize if -- again, if I said</p> <p>5 that incorrectly, and then he could be</p> <p>6 cross-examined. Any rebuttal and then closing</p> <p>7 statements, which again are optional.</p> <p>8 A decision will be based on the</p> <p>9 criteria set forth in the zoning ordinance and the</p> <p>10 final director's report of findings on the accessory</p> <p>11 dwelling unit license application. Please address</p> <p>12 all testimony only to this criteria. So I am aware</p> <p>13 of a motion to postpone the hearing that was</p> <p>14 submitted by the Munson's attorney, Ms. Michelle</p> <p>15 Rosenfeld yesterday evening. Are there any other</p> <p>16 preliminary matters that someone would like to bring</p> <p>17 to my attention?</p> <p>18 MR. MUNSON: None from the Munson's.</p> <p>19 MS. LEWINTER: Okay. Mr. Betru?</p> <p>20 MR. BETRU: None.</p> <p>21 MS. LEWINTER: Okay. All right. Hearing</p> <p>22 none other, so Mr. And Mrs. Munson, I appreciate</p> <p>23 that Ms. Rosenfeld could not be with us today. I</p> <p>24 will say typically an 11th hour request from an</p> <p>25 attorney who was just hired the day before by the</p>

<p style="text-align: right;">9</p> <p>1 moving party is not the best circumstances, but that 2 is actually really not the basis for Ms. Rosenfeld's 3 request for a postponement. It is my understanding 4 that she is requesting the postponement primarily on 5 the grounds that the actual application is still 6 outstanding, and so that this objection is in fact 7 premature, and also that she has some issues with 8 whether signage and notification has been done 9 appropriately. Is that your understanding Mr. and 10 Mrs. Munson? 11 MR. MUNSON: Yes. 12 MS. LEWINTER: Okay. Given that, I'm 13 hoping that we can turn to Mr. McNamara. Can you 14 fill us in, I don't know if you've had a chance to 15 review Ms. Rosenfeld's submission? 16 MR. MCNAMARA: What in particular would 17 -- would you like to know? 18 MS. LEWINTER: Well -- so, Ms. Rosenfeld 19 basically says that the application -- even though 20 we have a final decision, the application is really 21 not -- there's been no final ruling on it. 22 MR. MCNAMARA: That's correct. So 23 basically DHCA's standard operating procedure would 24 -- I have performed a preliminary inspection, I saw 25 that listed in the documents for this case. With</p>	<p style="text-align: right;">11</p> <p>1 file. 2 MS. LEWINTER: So given this -- what the 3 Munson's are arguing at this point is that the 4 hearing should be postponed because it's premature. 5 I think another option would be for them to withdraw 6 the objection at this point and then refile if and 7 when the ADU is actually approved. Mr. Betru, do 8 you have any objection to postponing this hearing 9 indefinitely until the ADU is actually finalized? 10 MR. BETRU: Yes, I do. The attorney said 11 that the signage is not present, and the Department 12 of Housing requires immense time to post the sign. 13 And I followed that procedure and after the month, I 14 returned the signage. So I'm not involved because 15 the sign is no more present on my yard. Also, the 16 request that is submitted is at the last moment, and 17 I think this is -- should not be acceptable. The 18 deadline was mentioned by Nana, should be 10th April 19 to submit anything. 20 MS. LEWINTER: I'm sorry, I did not 21 understand the last comment you made? 22 MR. BETRU: On the correspondences, Nana 23 informed, I think everybody that any document should 24 be submitted -- should be -- the deadline should be 25 10th April, and this postpone request came just</p>
<p style="text-align: right;">10</p> <p>1 that preliminary inspection, the property owner is 2 provided a list of requirements to complete before 3 the accessory dwelling unit can be licensed or 4 occupied. So the application is underway, there is 5 no final ruling, as you said, the owner has 6 (inaudible) time period to properly build a 7 permitted accessory parking unit. And then a final 8 inspection will then decide whether that unit is 9 applicable for a rental license. 10 MS. LEWINTER: Okay. So Mr. Betru, is 11 that consistent with your understanding at this 12 time? 13 MR. BETRU: Someplace he dropped, so I 14 didn't fully get what he said. If he repeats some 15 of what he said, it would be very useful. 16 MS. LEWINTER: All right. Mr. McNamara, 17 that is true, it was kind of fading in and out. 18 MR. MCNAMARA: Okay. So in short, what I 19 said is that the preliminary inspection was 20 completed with, that is requirements that are still 21 in the process of being obtained or built and that 22 then at a later date, a final inspection will be 23 conducted to determine if the property owner has 24 built a proper accessory dwelling unit, which would 25 then be licensed with the -- the application under</p>	<p style="text-align: right;">12</p> <p>1 yesterday. 2 MS. LEWINTER: Yes, I -- I appreciate 3 this -- this request is -- is quite last minute, but 4 the issue that it raises is -- is pretty 5 fundamental, which is that if -- if the ADU is not 6 going to get approved, if it turns out that you 7 cannot fulfill the preliminary requirements and then 8 move forward to a final determination, having a 9 ruling with regard to this objection is not an 10 efficient use of everybody's time. 11 MR. BETRU: Let me add something. 12 MS. LEWINTER: I'm sorry? 13 MR. BETRU: Can I add something? 14 MS. LEWINTER: Yes. 15 MR. BETRU: I applied for the ADU permit, 16 an inspector was on site, visited my house. And I 17 was given pending permit and which I return to DPS, 18 so now the matter is on DPS, I'm following up. The 19 DHCA already gave me an approval, so it's pending. 20 MS. LEWINTER: Correct, it is pending, 21 but it hasn't actually been approved. 22 MR. BETRU: Yeah, the DPS has to approve 23 it. 24 MS. LEWINTER: Correct. So I'm going to 25 grant the postponement because it seems premature to</p>

<p style="text-align: right;">13</p> <p>1 investigate whether the ADU is appropriate if there 2 has not been a final determination as to the ADU to 3 date. And it may ultimately make sense for the 4 Munson's to withdraw their objection and resubmit if 5 and when the ADU is actually finalized. Mr. 6 McNamara, have you seen an objection when everything 7 is still pending, proceed? 8 MR. MCNAMARA: I-- I agree with your -- 9 your thinking that this process is still underway, 10 the construction is still ongoing. As mentioned, 11 the permitting services requirements have not been 12 met, those permits have not been inspected or 13 finalized either. So this is still going through a 14 number of county offices and yet it -- there's -- 15 there's no way to know if the accessory dwelling 16 unit will even exist because those processes are 17 still going on. 18 MS. LEWINTER: Okay. Thank you. All 19 right. Given that, at a minimum this will be a 20 postponement, I just want to confer I'm a little -- 21 because there is a time frame once an objection is 22 filed within which a hearing is supposed to be held, 23 it -- it may be procedurally necessary for the 24 Munson's to withdraw and then resubmit. I think the 25 parties can communicate regarding that after we</p>	<p style="text-align: right;">15</p> <p>1 MS. LEWINTER: Yeah. 2 MR. AMENABAR: Yeah, I -- I -- just -- 3 just for the record, I'd just like to make a comment 4 that the person in question responded to one of my 5 letters suggesting, you know, in no stronger terms, 6 racism. I'd like to point out that I have never met 7 this person, I don't know who -- what they look like 8 or where they come from, so -- and I am myself an 9 immigrant, so that's kind of a ridiculous statement. 10 MS. LEWINTER: Mr. -- 11 MR. AMENABAR: Thanks. 12 MS. LEWINTER: Okay. All right. Again, 13 let's -- let's try and keep it to the specifics of 14 this particular hearing and let's try and keep it 15 civil. 16 MR. BETRU: Yeah. Can I -- 17 MS. LEWINTER: No, I'm going to stop that 18 there, you know, there are -- clearly there are 19 tensions within -- 20 MR. BETRU: I didn't use the word racism, 21 that is completely out of my response. 22 MS. LEWINTER: All right. Mr. Betru, 23 thank you. I'm going to conclude the hearing for 24 today and we can follow up with the parties in terms 25 of rescheduling if necessary. Thank you.</p>
<p style="text-align: right;">14</p> <p>1 conclude this hearing. But for now, we will not 2 proceed today with the hearing on the merits. I'm 3 going to find that the objection was prematurely 4 made and either the hearing will be reset for a 5 later date or the Munson's can resubmit an objection 6 at a later date. If there are any other issues or 7 matters that we need to discuss, otherwise, I think 8 we can conclude for today. 9 MR. MUNSON: I would just like to add, we 10 had a survey -- a land survey done of our property. 11 I know that this, I might potentially be outside the 12 scope of this morning's hearing, but the resident at 13 3108 took the demolished concrete wall and that has 14 been spread onto my property line and I would like 15 to have the concrete removed. 16 MS. LEWINTER: Mr. Munson, I am going to 17 stop you because that is outside the purview of this 18 particular issue. If you want to take that up with 19 Mr. Betru directly, the two of you can discuss that. 20 MR. MUNSON: Okay. 21 MS. LEWINTER: Okay? All right. If 22 there are no further matters, then I will conclude 23 for today. And -- 24 MR. AMENABAR: Can I make one -- can I 25 make one comment, this is Juan Amenabar?</p>	<p style="text-align: right;">16</p> <p>1 MR. AMENABAR: Thank you. 2 MR. BETRU: Thank you. 3 THE REPORTER: While -- while we're still 4 on the record, would anyone like to order a copy of 5 the transcript? 6 MR. MUNSON: Yes, please. 7 THE REPORTER: I'm going to need some 8 information in a moment here then, one second. 9 MR. MUNSON: Sure. 10 THE REPORTER: And then Ms. LeWinter, 11 would you like a copy? 12 MS. LEWINTER: I believe that OZAH always 13 orders one, so that's kind of outside of my -- 14 THE REPORTER: Okay. 15 MS. LEWINTER: -- scope to do that. I 16 think -- 17 THE REPORTER: Ms. Johnson, would you 18 happen to know? 19 MS. LEWINTER: Yeah, Nana would probably 20 follow up with you. Nana, can you hear us? 21 THE REPORTER: That's okay, I could have 22 someone follow up at a later time. 23 MS. LEWINTER: Okay. 24 (Off the record at 9:47 a.m.) 25</p>

CERTIFICATE OF COURT REPORTER


I, Socrates Matthews, AAERT CER, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings were electronically recorded by me; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Socrates Matthews, AAERT CER, Court Reporter
April 24th, 2023

CERTIFICATION OF TRANSCRIPT

I, Krystin Spolar, do hereby certify that the foregoing transcript, to the best of my ability, knowledge, and belief, is a true and correct record of the proceedings; that said proceedings were reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Krystin Spolar
Planet Depos, LLC
April 24, 2023

A					
<p>a-m-e-n-a-b-a-r 6:13 aaert 1:25, 2:14, 17:2, 17:15 ability 18:3 about 7:17 acceptable 11:17 accessory 5:12, 8:10, 10:3, 10:7, 10:24, 13:15 actual 9:5 actually 9:2, 11:7, 11:9, 12:21, 13:5 add 12:11, 12:13, 14:9 address 8:11 administrative 1:1, 3:4, 3:7 ado 1:6, 5:9 adu 1:6, 11:7, 11:9, 12:5, 12:15, 13:1, 13:2, 13:5 affairs 3:19 after 11:13, 13:25 again 7:16, 7:20, 8:4, 8:7, 15:12 agree 13:8 agreement 2:13</p>	<p>all 5:16, 5:18, 5:20, 6:25, 7:2, 8:12, 8:21, 10:16, 13:18, 14:21, 15:12, 15:22 already 12:19 also 3:15, 7:11, 9:7, 11:15 always 16:12 amenabar 3:21, 6:7, 6:11, 6:12, 6:16, 6:18, 6:21, 8:4, 14:24, 14:25, 15:2, 15:11, 16:1 andrea 1:13, 5:23 ann 3:17, 5:10 another 11:5 any 5:21, 7:18, 8:2, 8:6, 8:15, 11:8, 11:23, 14:6, 17:7, 18:8 anyone 16:4 anything 11:19 apologize 5:14, 8:4 applicable 10:9 applicant 3:16 application 8:11, 9:5, 9:19, 9:20, 10:4, 10:25 applied 5:13, 12:15</p>	<p>appreciate 8:22, 12:2 appropriate 13:1 appropriately 9:9 approval 5:12, 12:19 approve 12:22 approved 11:7, 12:6, 12:21 april 1:15, 11:18, 11:25, 17:16, 18:16 arguing 11:3 asked 7:16 ass 5:4 attention 8:17 attorney 8:14, 8:25, 11:10 austin 3:19, 6:4 available 5:8 avenue 3:8 aware 5:5, 7:2, 7:19, 8:12</p>	<p>because 7:7, 11:4, 11:14, 12:25, 13:16, 13:21, 14:17 been 9:8, 9:21, 12:21, 13:2, 13:11, 13:12, 14:14 before 1:13, 2:13, 8:25, 10:2, 17:3 behalf 3:3 being 7:4, 7:11, 10:21 belief 18:4 believe 16:12 best 9:1, 18:3 betru 3:16, 4:4, 5:14, 5:16, 5:19, 5:22, 6:2, 7:24, 8:19, 8:20, 10:10, 10:13, 11:7, 11:10, 11:22, 12:11, 12:13, 12:15, 12:22, 14:19, 15:16, 15:20, 15:22, 16:2 betru's 7:25 bouma 3:22 bring 8:16 build 10:6 building 3:9 built 10:21, 10:24</p>		
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