

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY

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CASE NO. AAO-14-03

**HEARING EXAMINER'S DISMISSAL ON GROUNDS OF MOOTNESS OF ALL
OBJECTIONS TO THE FINDINGS OF DHCA ON THE ACCESSORY APARTMENT
LICENSE APPLICATION (NO. 84414) OF STEVEN AND ERICA WEISS**

OPINION

Effective May 20, 2013, the Montgomery County Council established new procedures for licensing accessory apartments in the County. *See* Bill 31-12, which amended County Code §§2-140, 29-16, 29-19 and 29-26; and Ordinance 17-28 (Zoning Text Amendment No. 12-11), by which the District Council amended Divisions 59-A, 59-C and 59-G of the Zoning Ordinance. The new 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 formal findings regarding the application. Under the new statutory scheme, a license applicant or an aggrieved party may challenge DHCA's findings by filing a formal 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 April 1, 2014, Steven and Erica Weiss filed an application with DHCA, seeking a Class III Accessory Apartment Rental License (License Application No. 84414) for their single family home, which is located at 9641 E Bexhill Drive, Kensington, Maryland 20895, in the R-90 Zone (Tax Account Number 13-01153182).

On April 15, 2014, prior to any findings being entered by the Director of DHCA, an objection was filed with OZAH by Arthur Burns. It was assigned OZAH Number AAO 14-3 (Exhibit 4). Because the filing of the objection was clearly premature, no hearing date was established at that time.

The property was inspected on April 17, 2014, by Housing Code Inspector Robert Goff, who reported his findings in a memorandum dated April 18, 2014 (Exhibit 6). On April 25, 2014, the Director of DHCA issued a "Report of Findings" (Exhibit 8) listing the Director's Finding as "Finding Conditional," presumably meaning that the DHCA Director's approval of any license would be conditioned on Applicants correcting any problems noted during the housing inspection.

On May 7, 2014, Jim Pekar, President of the Rock Creek Hills Citizens' Association (RCHCA) filed a letter objecting to the findings of the DHCA Director and asking that any hearing be postponed until after RCHCA's general meeting scheduled for May 29, 2014 (Exhibit 12).

On May 14, 2014, formal objections to the Director's findings were filed with OZAH by seven individuals (Exhibit 16(a)): (i) Elliot Eisenberg; (ii) Stacey K. Fisk; (iii) Walter Von Schmidt; (iv) Paula Phillips; (v) Gail Jenkins; (vi) Bruce Glick; and (vii) Arthur Burns. Additional formal objections were thereafter filed by John Schumacher (Exhibit 18) and Douglas Svitchen (Exhibit 20).

On May 23, 2014, while a proposed hearing date was being discussed with the parties, Applicants Steven and Erica Weiss filed a letter with DHCA withdrawing their application (Exhibit 21). DHCA acknowledged the withdrawal of the application by letter dated May 28, 2014, and received by OZAH on June 5, 2014 (Exhibit 22).

The Hearing Examiner finds that the withdrawal of the Weiss's license application has rendered this case moot. In other words, there are no remaining issues to be decided by OZAH, and therefore no need for a hearing on the case. 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). In light of this development, all the pending objections must be dismissed as moot.

DECISION

Accordingly, based on the foregoing findings and conclusions, all objections contained in OZAH Case # AAO 14-03, to License Application # 84414 for an Attached Accessory Apartment are hereby dismissed as moot.

Dated: June 6, 2014

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: Applicants Steven and Erica Weiss
All Objectors:
Jim Pekar, President of RCHCA
Arthur Burns, Elliot Eisenberg, Stacey K. Fisk,
Walter Von Schmidt, Paula Phillips, Gail Jenkins,
Bruce Glick, John Schumacher and Douglas Svitchen
Rick Nelson, DHCA
Dan McHugh, DHCA
Ada DeJesus, DHCA
Robert Goff, DHCA