

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY

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CASE NO. AAO-14-01

HEARING EXAMINER'S OPINION AND DECISION ON THE OBJECTION OF
TERESA BURLESON TO THE FINDINGS OF DHCA ON AN ACCESSORY
APARTMENT LICENSE APPLICATION

I. STATEMENT OF THE CASE

On June 11, 2013, Krishna & Jyothirmai Guduru filed an application with the Department of Housing and Community Affairs (DHCA), seeking a Class III Accessory Apartment Rental License (License Application No. 70811) for their single family home, which is Part of Lot 15, Block 89, of the Hardings Subdivision, located at 2509 Briggs Chaney Road, Silver Spring, Maryland 2013, in the R-200 Zone (Tax Account Number 002550886). *See Exhibit 1.*

The property was inspected on July 2, 2013, by Housing Code Inspector Robert Goff, who reported his findings in a memorandum dated July 11, 2013 (Exhibit 2). Mr. Goff observed the notice sign properly posed and determined, "There are no violations regarding the accessory apartment code and zoning requirements." Exhibit 2. He also noted that the accessory apartment has a total gross area of 850 square feet and the driveway has a total of 2,850 square feet.

On July 15, 2013, the Director of DHCA issued a "Report of Findings," listing compliance with all applicable requirements and approving the accessory apartment license (Exhibit 3).

On August 12, 2013, Teresa Burluson timely filed a formal Objection to the decision of the DHCA Director with the Office of Zoning and Administrative Hearings for Montgomery County (OZAH). It was assigned OZAH Number AAO 14-1 (Exhibit 4), and OZAH Staff attempted to get clarification of the sketchy and partly illegible information provided by Ms. Burluson (Exhibit 5). Even though Ms. Burluson never provided the clarification sought by OZAH, notice of a hearing on the objection was issued, as required by County Code §29-26, on August 19, 2013 (Exhibit 6), within 5 business days after the objection was received. The hearing was scheduled for August 29, 2013, within 20 days after the objection was filed, as required by Code §29-26.

The issues raised by the instant objection, based on our best efforts to decipher the Objector's handwriting, are:

This house already resembles an office building, with an enormous parking area. To add additional people in an apartment to a 7,000 sq. ft. home turns this almost into an apartment building. There is also a business running from here - so the reasoning (for all?) is unclear. More cars, parking, etc. would detract from residential area. Is this a business? apartment building? church?

The hearing proceeded as scheduled on August 29, 2013. The property owners, Krishna & Jyothirmai Guduru, and the DHCA Housing Code inspector, Robert Goff, appeared at the hearing. The Objector, Teresa Burleson, did not appear, and there were no other witnesses.

For the reasons which will be amplified in the next section of this Opinion, the Hearing Examiner held that the only objection properly before him related to parking because the other issues contained in the hand-written objection were not part of the findings issued by the DHCA Director.

At the hearing, Housing Inspector Goff testified that the property met all the requirements for accessory apartment license sought and that there was ample parking on the site to accommodate the residents and tenants. Ms. Guduru also confirmed that any tenants could park on her property (*i.e.*, not on the street).

Exhibits 1 through 6 were admitted into evidence, and the record closed at the conclusion of the hearing.

II. FINDINGS AND CONCLUSIONS

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 DHCA for a license, except in circumstances not present in this case (*i.e.*, failure to meet certain setback and parking space requirements), in which instance the applicant would have to apply to OZAH for a special exception.

Under the new statutory scheme, a license applicant or an aggrieved party may challenge DHCA's findings by filing a formal objection with OZAH within 30 days after the DHCA Director issues his findings. *Code* §29-26. OZAH must issue a notice of hearing within five business days¹ thereafter and schedule a hearing within 20 calendar days. Both those deadlines were met in this case.

There is a legal wrinkle, however, in the language of the recently enacted legislation. Code §29-19(b)(1)(C) specifies that the DHCA Director, in reviewing an Accessory Apartment

¹ Pursuant to Code §1-301(c)(2), "if the period is 7 days or less, omit Saturdays, Sundays, and legal holidays."

License Application, must find that “the accessory apartment satisfies the standards for an accessory apartment in Section 59-A-6.19.” The problem is that Code §59-A-6.19 contains standards for Guest Houses, not Accessory Apartments. It is Code §59-A-6.20 that sets forth the standards for accessory apartments. This conflict in the language creates an ambiguity in the Code.

The applicable rule of statutory construction was set forth by the Maryland Court of Appeals in *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006),

Our goal is to ascertain and implement the legislative intent, and, if that intent is clear from the language of the statute, giving that language its plain and ordinary meaning, we need go no further. We do not stretch the language used by the Legislature in order to create an ambiguity where none would otherwise exist. If there is some ambiguity in the language of the statute, either inherently or in a particular application, we may then resort to other indicia to determine the likely legislative intent. [Citations omitted.]

Fortunately, the ambiguity in this is easily resolved because the intent of the Council is apparent. Since Code §29-19(b)(1)(C), by its own terms, is clearly attempting to incorporate the requirements for an Accessory Apartment and not a Guest House, I conclude that the intent of the Council was to require the Director of DHCA to apply the standards in Code §59-A-6.20, not in Code §59-A-6.19. Based on the DHCA Director’s Report of Findings (Exhibit 3) that is precisely what the Director did in this case.

This conclusion brings us to the next issue in this case – whether the Objector raised a valid objection in this case. Initially, it could certainly be argued that by failing to appear at the hearing, the Objector waived any objection she might have pursued; however, out of an abundance of caution, the Hearing Examiner proceeded to evaluate the objection based on the written submission (Exhibit 4). Under County Code §29-26, we may decide only the issues raised in the objection.

The Hearing Examiner finds that the written objection itself is flawed, at least in part. In the text of the objection, which is quoted above, Ms. Burleson objects, *inter alia*, to the size of the existing home, and to its alleged resemblance to an apartment building or a church. She also alleges that a business is being run from the home. None of the criteria specified in Code §§29-19(b)(1) and 59-A-6.20 address the issue of a business being run from the home or whether it looks like an apartment building or a church because of its size, and therefore none of the DHCA Director’s findings in Exhibit 3 address those issues.

Code §29-26(b)(2) permits an objection from an aggrieved person only to:

- (A) a finding of fact by the Director; or
- (B) an issue regarding the adequacy of on-street parking.

Thus the portion of the Objection that address whether a business is being run from the home or whether it looks like an apartment building or a church because of its size is not properly before this body in this proceeding. If these allegations are a legitimate concern to the

community, this objection proceeding is not the proper forum in which to raise them. The one issue raised by the Objector that is arguably relevant relates to parking, so the Hearing Examiner allowed testimony on that point, as discussed above. It should be noted, however, that Ms. Burleson does not appear to be objecting to the adequacy of parking, but rather to the abundance of it provided on site by the Gudurus.

The testimony of Ms. Guduru and the DHCA Housing inspector confirm that there is ample parking on site for residents and tenants, and the Hearing Examiner therefore finds that there is no real question about the adequacy of on-street parking.

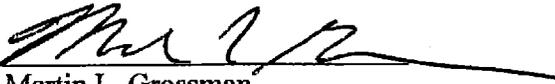
In sum, there was no evidence presented in this case that challenged any finding of the DHCA Director or raised an issue regarding the adequacy of on-street parking.

III. DECISION

Accordingly, based on the foregoing findings and conclusions, the *Objection of Teresa Burleson*, OZAH # AAO 14-01, to License Application # 70811 for an Attached Accessory Apartment is overruled and denied. The report and findings of the Director of the Department of Housing and Community Affairs (Exhibit 3), dated July 15, 2013, approving an attached accessory apartment for the cellar of a one-family, detached home at 2509 Briggs Chaney Road, Silver Spring, Maryland, are hereby upheld.

Dated: August 30, 2013

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: Krishna & Jyothirmai Guduru
Teresa Burleson
Rick Nelson, DHCA
Dan McHugh, DHCA
Ada DeJesus, DHCA
Bob Goff, DHCA