

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

**Stella B. Werner Council Office Building**  
**100 Maryland Avenue, Room 200**  
**Rockville, Maryland 20850**  
**<http://www.montgomerycountymd.gov/ozah/index.html>**  
**Phone: (240) 777-6660; Fax (240) 777-6665**

**CASE NO. AAO-17-02**  
**OBJECTIONS TO FINDINGS IN THE DHCA DIRECTOR'S REPORT ON ACCESSORY**  
**APARTMENT LICENSE APPLICATION # 95591 OF LOUISE AND STEVEN YEGHER**

**HEARING EXAMINER'S OPINION AND DECISION**

**OPINION**

Effective May 20, 2013, the Montgomery County Council established 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 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 28, 2017, Louise and Steven Yegher filed an application with DHCA, seeking a Class III Accessory Apartment Rental License (License Application No. 95591) to locate an accessory apartment in the basement of a one-family, detached home at 902 Loxford Terrace, Silver Spring, Maryland 20901, in the R-60 Zone. The property is identified as is Lot 28, Block M, of Subdivision 0102 (Tax Account Number 01351510). Exhibit 1.

On May 8, 2017, the Director of DHCA issued a "Report of Findings" (Exhibit 2) listing the Director's finding as "PE," presumably meaning that the DHCA Director's license approval was still pending. Nevertheless, the issuance of a Director's Report triggered the 30-day period mentioned above for filing any objection under Code Section 29-26.<sup>1</sup>

As a result, on June 7, 2017, eight neighbors timely filed an Objection to the DHCA Director's findings and an additional three neighbors filed thereafter (Exhibits 4 through 14). The timely objections were filed by John Wilson, Kathleen Waybright, Nicole Waybright, Christopher

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<sup>1</sup> The Hearing Examiner has asked DHCA to revise its procedures so that a Director's Report is not issued until the Director can make all the finding required by the Code, so that piecemeal Objections will not be filed with OZAH. DHCA is currently reviewing its policy in this regard. Exhibit 23.

Duplisea, Penny Kline, Roderick Wilbon, Kevin Verbrugge, and Peter Sullivan. Three other neighbors (Marcia Goggin, Andrea Verbrugge, and Carlos Jimenez) filed objections after the 30-day deadline. The objections were assigned OZAH Number AAO 17-02.

The Director's Report had checked a box indicating that the subject site was the Applicants' primary residence, a statutory requirement to obtain an accessory apartment license. Code Section 29-19(b)(1)(B). The central point in all the objections is the assertion that the subject site is not actually the primary residence of Applicants Louise Yegher and Steven Yegher.

The property was inspected on June 5, 2017, by Housing Code Inspector Cece Kinna, who reported her findings in a memorandum dated June 15, 2017 (Exhibit 20). The first numbered paragraph of Ms. Kinna's report states:

1. 902 Loxford Terrace, Silver Spring, MD 20901 is currently vacant. Tax id 01750356 shows that on 12/20/2016 Louise Yegher and Steven Yegher purchased a residential condominium at 3510 Forest Edge Drive, #3B, Silver Spring, MD 20906 and is the principal residence of same ownership. Owner must reside in the residence where an Accessory Apartment is located.

At the hearing, Applicant Steven Yegher testified that the subject site would not be the primary residence of the Applicants, and he stated that the Applicants would therefore withdraw their application for an accessory apartment license. Tr. 9.

MR. YAGHER:<sup>2</sup> We are going to withdraw the application for the accessory apartment.

MARTIN GROSSMAN: Ok. . . . I believe the other part of your statement was that neither your mother nor yourself will be primary residents, that . . . the subject site which is the address at 902 Loxford Terrace Silver Spring Maryland will not be principle residen[ce] of either yourself or your mother?

MR. YAGHER: That is correct.

Mr. Yegher also has a power of attorney to act on behalf of his mother, Louise Yegher. Ex. 21(a).

Based on Ms. Kinna's report and Mr. Yegher's sworn testimony, the Hearing Examiner determined that no further evidence was needed to establish that the Applicants would not satisfy the primary residence requirement and that the Objections case would be mooted by withdrawal of the application.

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.

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<sup>2</sup> Mr. Yegher's name is consistently misspelled as "Yagher" throughout the hearing transcript.

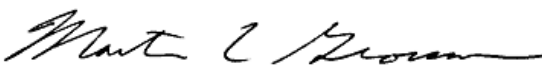
**DECISION**

Accordingly, based on the foregoing findings and conclusions, the Director of Department of Housing and Community Affairs must enter License Application # 95591 for an Attached Accessory Apartment at 902 Loxford Terrace, Silver Spring, Maryland 20901, 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 17-02, to License Application # 95591 are hereby dismissed as moot.

Dated: July 7, 2017

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:

Louise Yegher  
Steven Yegher  
Marcia Goggin  
Andrea Verbrugge  
Carlos Jimenez  
John Wilson  
Kathleen Waybright  
Nicole Waybright  
Christopher Duplisea  
Penny Kline  
Roderick Wilbon  
Kevin Verbrugge  
Peter Sullivan  
Clarence Snuggs, Director, DHCA  
Dan McHugh, DHCA  
Sheila Price, DHCA  
Francene Hill  
Cece Kenna, DHCA