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| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE |
| W side of Gaybrook Road; 170 feet S of | | |
| the c/l of Gaymount Road | * | DEPUTY ZONING |
| 1 st Election District | | |
| 1 st Councilmanic District | * | COMMISSIONER |
| (2112 Gay Brook Road) | | |
| | * | FOR BALTIMORE COUNTY |
| Hafeez Anjum | | |
| <i>Petitioner</i> | * | CASE NO. 2009-0325-SPH |

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Hafeez Anjum, the legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure (shed) to be equipped with a full bathroom for the occasional overnight use by associates. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing was Petitioner Hafeez Anjum. Appearing as interested citizens opposed to the relief were Jay Cohen of 2119 North Rolling Road and Petitioner’s adjacent neighbor to the northwest, Elouise Wright, of 2110 Gaybrook Road.

Testimony and evidence offered revealed that the subject property, 2112 Gaybrook Road, is a rectangular-shaped property comprised of approximately 0.23 acre, more or less, zoned D.R.5.5. The subject property is located on the south side of Gaybrook Road, east of North Rolling Road and west of Lord Baltimore Drive in the Windsor Mill area of Baltimore County. As shown on the site plan, the property is currently improved with a split-level single-family dwelling (26.6 feet by 40.3 feet) and a storage building (27.7 feet by 11.7 feet) in the rear of the home

equipped with a toilet room and sink, and currently serving as a storage area for the principal dwelling.

Providing some background information on his instant special hearing request, Petitioner presented two applications for building permits that had been submitted to the Department of Permits and Development Management, which were marked and accepted into evidence as Petitioner's Exhibits 3 and 4. Petitioner's Exhibit 3, an application for permit dated October 28, 2008, approved the construction of an accessory structure containing a storage area and a powder room. However, said permit specifically enumerated a condition prohibiting the installation of a tub or shower. Petitioner's Exhibit 4, an application for permit dated June 2, 2009, requested approval of an addition to the prior approved accessory structure, expanding the use of the building as a "guest room with full bath for religious purposes and storage." There is no signature of approval on Petitioner's Exhibit 4, which is presently pending following resolution of the instant special hearing request.

According to testimony and evidence presented, specifically the affidavit of Petitioner to accompany the zoning relief petition marked and accepted into evidence as Petitioner's Exhibit 5, Petitioner desires to install a tub/shower in the existing accessory structure so as to provide a guestroom complete with a full bathroom for occasional use by overnight associates. Petitioner explained that the tub/shower would be used for washing prior to religious prayer. Petitioner is an air conditioning/refrigeration contractor who performs most of his work for Pizza Boli's. One of his three associates/employees often stays overnight in this building because Petitioner's Muslim religion prohibits non-familial males to sleep overnight in the principal dwelling. Petitioner requests special hearing relief to permit the proposed tub/shower, with a determination that, despite a full-bathroom and guestroom, the building is a permitted accessory structure.

The Protestants in attendance at the hearing presented testimony that strongly opposed the requested relief. Jay Cohen, who resides at 2119 North Rolling Road -- which fronts Rolling Road and backs up near the rear of the subject property -- notes that the building in question looks more like a dwelling rather than a storage shed or accessory structure. The building has a hot water heater, vents, and plumbing. He also indicated that the lots in the Rolling Road Farms subdivision, of which Protestants' and Petitioner's properties are a part, are smaller than a quarter acre. This small lot size creates close living quarters for neighboring properties. Mr. Cohen is further concerned that Petitioner could rent out the storage shed as a guest house in the future. Although Petitioner indicated he would not do so, he did indicate that he would install heaters and a window-type air conditioner if the requested relief were granted. Mr. Cohen stated that individuals temporarily sleeping in or even residing in the subject building, which is located very close to Mr. Cohen's rear property line, would adversely effect his property and the surrounding community by exacerbating the existing lot size constraints.

Elouise Wright, who resides at 2110 Gaybrook Road adjacent to Petitioner, echoed the concerns of Mr. Cohen. Ms. Wright also stated that she suspects Petitioner has split up the principal dwelling into two apartments and that the subject building would be another "apartment" for Petitioner or others. Ms. Wright noted that there are people constantly coming and going from Petitioner's home and that she is concerned that the subject property is being used as a boarding house.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated July 6, 2009 stating that the floor plan detail of the detached building shows a full bathroom and a storage room that is big enough to be a large bedroom. It is questionable whether the proposed use complies

with the definition of accessory use or structure contained in Section 101.1 of the B.C.Z.R. To that end, the Office of Planning recommends that a determination should be made at the hearing whether the structure is customarily incident to the principal use or structure; whether it serves the principal use or structure; and whether it contributes to the comfort, convenience or necessity of occupants in the principal use or structure served. According to Petitioner's statement in the petition, the full bathroom is for the occasional overnight use by associates. Therefore, it is not intended for the use of the persons residing in the dwelling.

Based on the testimony and evidence adduced at the hearing, I am not convinced that relief is warranted under the circumstances. Section 101.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) defines an accessory use or structure as:

“a use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure.”

In the instant matter, Petitioner requests that the undersigned approve a one-story building equipped with a guestroom and full bathroom as an accessory structure. However, in my opinion this use would not be “incident and subordinate to” the principal dwelling nor serve the principal use or dwelling. Petitioner admits that the proposed building would have overnight occupants unrelated to the principal dwelling. Further, Protestants and this Hearing Officer are skeptical as to whether individuals would be living in the proposed building full-time. Indeed, as Mr. Cohen testified, with the existing and proposed amenities, the building resembles a dwelling more than an accessory structure. It does not appear that the proposed use for the building would subordinately serve the principal dwelling like a shed or garage would. Although I am mindful of Petitioner's religious purpose for a tub/shower and understand his reasons given for the instant request, I am also cautious of the potential impact on adjacent neighbors that the proposed conversion of the

storage building and use might have. Moreover, as noted by the Zoning Advisory Comments enumerated above, the Office of Planning is also very skeptical as to whether the proposed addition and use are consistent with the definition of an accessory use or structure. Petitioner for his part has not alleviated those concerns, and weighing the desires of Petitioner with the concerns expressed by members of the community, I am not persuaded to grant the requested relief in this instance. In short, I find that Petitioner's special hearing request is not within the spirit and intent of the definition enumerated in Section 101.1 of the B.C.Z.R. for an accessory use or structure, and the conversion of this storage shed into a guestroom with full tub/shower -- and potentially into a separate dwelling -- is likely to have a negative impact on the surrounding community.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's request for special hearing should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 21st day of August, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure (shed) to be equipped with a full bathroom for the occasional overnight use by associates be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

____SIGNED____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz