

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
S side of Burke Avenue; 125 feet W of the c/l		
of Aigburth Avenue	*	DEPUTY ZONING
9 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(115 Burke Avenue)		
	*	FOR BALTIMORE COUNTY
Wayne J. and Lisa S. Knell		
<i>Petitioners</i>	*	CASE NO. 2010-0042-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 the legal property owners, Wayne and Lisa Knell. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a rooming house for a maximum of four (4) unrelated adults pursuant to Sections 408B.1 and 502.1 of the B.C.Z.R. As filed, the Petition also requested Special Hearing relief to approve a modification of Section 1B01.1.B.1.b of the B.C.Z.R. pursuant to Section 408.B.1.A.2.g of the B.C.Z.R.¹ The subject property and requested relief are more fully described on the site plan, which was marked and accepted into evidence as Petitioners' Exhibit 8.

Appearing at the requisite public hearing in support of the requested special hearing relief were Petitioners Wayne and Lisa Knell along with their attorney Bruce E. Covahey, Esquire. The case also garnered significant interest from the community and approximately thirty neighbors and interested citizens attended the hearing in opposition to the requested relief. For the sake of brevity, their names and addresses are not specifically identified in this Order, but they are all listed on the "Citizens Sign-In Sheet," which was circulated before the hearing began

¹ At the outset of the hearing, the parties agreed that this portion of the request was not legally required. Accordingly, this portion of the Petition shall be dismissed as moot.

and is contained within the case file. It should also be noted that twelve letters from various individuals and community associations opposing the requested relief were submitted and accepted into evidence as Protestants' Exhibits 2A through 2L.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains approximately 6,000 square feet or 0.14 acre, more or less, zoned D.R.5.5. As shown on the site plan and the map of the property that was marked and accepted into evidence as Petitioners' Exhibit 6, the property is located on the south side of Burke Avenue, east of York Road, in the Donnybrook area of Towson in Baltimore County. The property is improved with an existing two-story brick and frame dwelling containing 1,848 square feet. Mr. Knell testified that he and his wife took title to the property in 2007 from his wife's parents, and submitted the deed to the property, which was marked and accepted into evidence as Petitioners' Exhibit 1. The property had been in Mrs. Knell's family since 1986, and has been consistently used as a rental home throughout this time period.

Mr. Knell testified that once he took title to the property, he performed approximately \$47,000 in renovations to the existing dwelling, completely revamping the home by adding central air conditioning, new furniture, windows and siding, landscaping, new doors, insulation, and updated bathrooms. Mr. Knell also converted a room that was previously used as a dining room into a fourth bedroom, as demonstrated on the floor plan of the home, which was marked and accepted into evidence as Petitioners' Exhibit 7. The dwelling and surrounding property is depicted in a series of photographs, which were marked and accepted into evidence as Petitioners' Exhibits 9A through 9J. The photographs reveal that the home fronts on Burke Avenue with a driveway leading to a one car garage, but can also be accessed through an alley that runs along the rear of the property where Mr. Knell removed a patio area that was previously

surrounded by shrubs and bushes. Parking can be located in the garage and on the driveway, as well as the rear of the property.

Mr. Covahey elicited testimony from Mr. Knell demonstrating that Petitioners are professional landlords who also own an approximately 60-unit apartment complex known as “Quail Run” in Berlin, Maryland, just outside of Ocean City, Maryland. The Knells submitted letters in support of their petition from the Berlin Mayor and Police Chief, which were respectively marked and accepted into evidence as Petitioners’ Exhibits 2 and 3. The letters indicate that the Knells have been an asset to the Berlin community, and are far from absentee landlords attempting to obtain an extra source of income without taking an active role in the maintenance and well being of their properties. The Knells live approximately 45 minutes from Towson, and Mr. Knell testified that he has given his contact information to several members of the surrounding community and is available to deal with any problems that may occur on the subject property.

While the B.C.Z.R. permit the Knells to lease this property to two unrelated people as of right, the Knells filed this Petition in an effort to obtain the authority to lease to a maximum of four unrelated people. According to Mr. Knell, the property is in an excellent location to lease to Towson University students, which is located in close proximity to the school. While Mr. Knell is charging a flat monthly rate of \$1,700 whether the property is leased to two or four people, he testified that it would benefit the Knells (by making it easier to find tenants) and the future lessees (by making the rent cheaper for students or families) if the property could be leased to three or four unrelated people. Mr. Knell conceded that the property has been leased to three or four unrelated people in the past, but indicated he was unaware of the regulation limiting rentals

to two unrelated people. Relief is now requested to continue to lease to a maximum of four unrelated people in the future.

Following Petitioners' presentation of their case, approximately ten citizens testified at the public hearing, all in strong opposition to the request for special hearing. Again, for the sake of brevity, the witnesses will not be individually named, but their names are contained in the case file and are made a part of the record in this case. The witnesses, some of whom represented local community associations such as the Aigburth Manor Association of Towson, Inc., which encompasses the subject property, and the Greater Towson Council of Community Associations, which is an umbrella organization of 30 community associations, all expressed a number of concerns with this petition. Neighbors testified that since Mr. Knell cleared the vegetation in the rear of the property, students have begun to drive at excessive speeds, often late at night, in the alley that separates the property from a line of row houses. Neighbors are concerned that their children face a greater risk of injury because of the increased traffic, and also expressed concern with the congestion that has been caused by increased traffic flow to the property.

In addition, several citizens complained about the effects of permitting an increased number of students to live in homes in the small surrounding community. Neighbors have been burdened with loud music late at night, and one explained that she had to actually move her bedroom from the side of her home fronting the subject property to the far side of her home to reduce the noise emanating from the subject property. Excessive garbage, trash, and debris was another concern, and the Protestants submitted several photographs depicting these conditions on the property, which apparently have increased in the past few years due to the addition of the fourth bedroom in the home. The photographs were marked and accepted into evidence as Protestants' Exhibits 2A through 2K, and they reveal the changes to the layout of the backyard,

the new parking area in the rear of the property, and displays of significant amounts of garbage in the front of the home. While the Protestants were understanding of the lack of housing available for Towson University students, they strongly opposed overcrowding their small community by permitting more than two unrelated people to live in a dwelling such as on the subject property. According to the Protestants, this is precisely the type of request that former Deputy Zoning Commissioner John V. Murphy was referring to when he denied a similar request in Case Number 2007-0294-SPH on the basis that it could create a domino effect in the surrounding community.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated September 3, 2009, which indicates that the property is located in a neighborhood that has capacity issues and Petitioners seek a boarding house for more than two unrelated adults. The neighborhood is currently zoned D.R.5.5 and has existing problems with traffic and parking. The neighborhood is within the boundaries of the traffic shed for a low rated traffic intersection and already has permit only off-street parking to manage the limited amount of parking spaces. Allowing more than two unrelated adults on a single property would set a precedent in this community, which would only further exacerbate its current overburdened conditions. Furthermore, the neighborhood has had a long history of rental properties being leased by multiple tenants beyond that which is permitted by the Regulations. These rental properties in the past have led to increases in nuisance crime, noise, illegal parking and lack of maintenance. The community has struggled and fought hard to remove any rental properties that were leasing more residents than legally allowed. Granting permission of a rooming house would also set a bad precedent for the

neighborhood and could possibly set off a domino effect of other rental properties also looking for zoning relief for rooming houses.

Based on the testimony and evidence, I am not persuaded to grant the requested relief. I acknowledge that Mr. Covahey presented credible evidence in support of Petitioners' request, and I do not believe the Knells would act as absentee landlords with a complete disregard for the effects that their property would have on the surrounding community. That being said, based on the outpouring of testimony and letters opposing the requested relief, I cannot find that the boarding/rooming house would meet the requirements of section 502.1 of the B.C.Z.R.

That section requires, among other things, that a request would not tend to create congestion in roads, streets or alleys therein, and this was a major concern for all of the witnesses that testified at the public hearing as well as the Office of Planning. As a practical matter, if four unrelated students or other individuals were permitted to live in a single-family dwelling, there would likely be at least four cars on the property and often even more to accommodate friends and other visitors. This is twice as many cars as would typically park on the property if the B.C.Z.R. were strictly enforced. In my view, permitting more than two unrelated adults to reside in the dwelling would cause congestion and increased traffic, contrary to Section 502.1.B of the B.C.Z.R.

Additionally, the Protestants raised legitimate concerns of safety for children, excessive music and noise, and increased amounts of trash and debris. Based on the collective testimony of the witnesses at the public hearing, along with the numerous letters contained in the case file, I find that this request would adversely impact the health, safety, and general welfare of this community. Accordingly, I shall deny the request for special hearing.

In conclusion, it should be noted that the instant Petition does raise a legitimate, ongoing issue concerning the increase in enrollment at Towson University and the lack of housing available to students. On the one hand, many of the homes in the Towson community, such as the subject property, were built long ago -- mostly in the 1930's and 40's -- and were intended for use by a single family. The small surrounding neighborhoods along Burke Avenue and the adjoining streets are simply not equipped to handle the inflow of university residents. On the other hand, the university and its student body are left with a situation where there is an unfulfilled need for student housing, with a recent increase of approximately 4,000 enrolled students and only approximately 600 beds on campus to accommodate for this growth. Unfortunately, this conundrum cannot be solved by an Order from the Office of the Zoning Commissioner. Rather, with each incoming freshman class, it will likely continue to be a source of tension between the school and the nearby Towson community unless or until some sort of compromise or agreement can be reached.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 15th day of October, 2009, that Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a rooming house for a maximum of four (4) unrelated adults pursuant to Sections 408B.1 and 502.1 of the B.C.Z.R. be and is hereby **DENIED**; and

IT IS FURTHER ORDERED that Petitioners' request for Special Hearing relief to approve a modification of Section 1B01.1.B.1.b of the B.C.Z.R. pursuant to Section 408.B.1.A.2.g of the B.C.Z.R. be and is hereby **DISMISSED AS MOOT**.

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