

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
NE/S Skidmore Court, 335' NE of c/line		
Radcliff Road	*	ZONING COMMISSIONER
<b>(16 Skidmore Court)</b>		
9 <sup>th</sup> Election District	*	OF
5 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
16 Skidmore Court, LLC		
Petitioner	*	<b>Case No. 2010-0133-SPH</b>

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Robert S. Handzo, Resident Agent, on behalf of the owner of the subject property, 16 Skidmore Court, LLC, by and through its attorney, Edward J. Gilliss, Esquire of Royston, Muller, McLean & Reid, LLP. The Petitioner requests a special hearing, pursuant to Sections 500.7 and 104 of the Baltimore County Zoning Regulations (B.C.Z.R.), for a determination that 16 Skidmore Court is a lawful non-conforming use for “boarding or rooming house” purposes consistent with B.C.Z.R. Section 101.1 (definition of boarding or rooming house) by virtue of the fact that 16 Skidmore Court, LLC was organized as a Maryland Limited Liability company and became the legal owner of the above-referenced property prior to the effective date of County Council Bill 17-09 (the *Previous Legislation*), B.C.Z.R. 101.1 after the effective date being known as the *New Legislation*.<sup>1</sup> The subject property and requested relief are more particularly described on the site plan and in the Memorandum of Law with

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\* I am grateful for and would like to acknowledge the research and assistance of Sabrina E. Chase, a lawyer in the County’s Office of Law, in the preparation of this Order.

<sup>1</sup> Allegations of a boarding house/rooming house were once again made by neighbors after the effective date (April 19, 2009) of Bill No. 17-09. An investigation as authorized by the Department of Permits and Development Management (DPDM) was conducted and a correction notice issued. See Division of Code Inspections and Enforcement Violation Case No. FAO149449/CO0066495. In accordance with B.C.Z.R. Section 500.7, Petitioner requests this hearing for a determination as to whether 16 Skidmore Court violates the zoning regulations.

supporting documents, submitted which were accepted into evidence and marked as Petitioner's Exhibits 1 and 2, respectively.

Appearing at the requisite public hearing in support of the request were Stephen Vetter, managing member of the LLC, Emily K. Lashley, Esquire (an attorney from the locale) and Edward J. Gilliss, Esquire, counsel for Petitioner. This request generated significant public interest and numerous residents from the surrounding community appeared, including: Edward T. Kilcullen, Jr., President of The Greater Towson Council of Community Associations, Inc. (GTCCA), Andrea C. Dodge, Nancy E. Pivec, President, Towson Park Community Association, Ellis Rios Winter, Ruth M. Adams, Richard Parsons, also with GTCCA, Dorothy M. Mandell, Sister Michele Kriczky, Sister Evelyn Grudza, Susan Shankroff, Cynthia Sommer, James Cox, Mary-Louise Stenchly, Paul S. Hartman with the Aigburth Manor Association, Inc., Fay Citerone from the Knollwood-Donnybrook Improvement Association, Peggy Squitieri of Ruxton Riderwood Lake Roland Area Improvement Association (RRLRAIA), Susan Vaupel, Erik Cloyd, Chris Rabarn, Nanci Barker, Abass Dabirsiaghi, John S. Simms, Esquire, G.T. Keplinger, President, Burkleigh Square Community Association, Helen Keplinger, Michael Ertel, Vice President of GTCCA and President of West Towson Neighborhood Association, John Maranto, President of The Yorkleigh Community Association, and Howard M. Taylor. Also attending as interested persons were Janice Solomon and Mike Mohler with DPDM. It should be mentioned that numerous letters and e-mails in opposition were received and collectively marked as Protestants' Exhibit 1.

The facts of the case are relatively simple as referenced in the testimony and evidence produced at the hearing. On June 16, 2005, Stephen Vetter and his son, Brian Vetter, purchased the subject property which consists of an irregularly shaped lot roughly 0.132 acres in area and

located on the east side of Radcliffe Road, just west of Fairmount Avenue in the Towson. The property is zoned D.R.10.5 and improved with a two-story brick end-of-group townhome built in 1955. The Vettters purchased the property as a place for Brian Vetter to reside while attending Towson University.<sup>2</sup> When the semester began, however, four (4) students had moved in (including Brian). What transpired thereafter is in dispute and has been ongoing for many months. Testifying in strong opposition to four (4) college students living in the house and providing a history of the problems were Messrs. Simms, Cox, Hartmann and Kilcullen, Sister Evelyn Grudza, and Mmes. Dodge (adjacent neighbor), Sommer, Adams, Pivec, Barker, and Citerone. These witnesses each provided their own individual testimony and offered exhibits, but the clear tenor and theme of their remarks relate to declining property values, increased foot and vehicle traffic – often five (5) or six (6) vehicles belonging to people living or visiting the subject property take up needed parking spaces – burdens and emotional stress caused by late night parties with loud music, etc.<sup>3</sup> (See Protestants Exhibits 1 through 3).

The Vettters nightmare began in March 2007 when Code Enforcement Officer Latashia Rumsey-Scott visited the site and issued a “Correction Notice” informing the Vettters that they would need to bring the property in conformance with the zoning regulations and reduce the number of unrelated tenants to two (2). In order to create a lawful means for other students to reside in the townhouse<sup>4</sup> and generate funds to pay the mortgage obligation, 16 Skidmore Court, LLC (LLC) was established. The ownership of the property was transferred from the Vettters to

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<sup>2</sup> Stephen G. Vetter’s name appears on the Deed. He and his wife, Teresa, do not reside on the property and own their own single-family residence located in Annapolis.

<sup>3</sup> Many neighbors were quite demonstrative when testifying bringing to the minds eye images of the infamous movie -- National Lampoon’s Animal House.

<sup>4</sup> B.C.Z.R. Section 408.B.1 provides the process for obtaining a *use permit* for a boarding or rooming house in D.R. zones and restricts the use ***only in single-family detached dwellings***.

the LLC by virtue of a deed that converted the real estate enterprise as defined under Section 12-108(bb) of the Tax Property Article of the Annotated Code of Maryland to a limited liability company, effective September 21, 2007. The transferring deed located at Liber 0027528, Folio 500 (the Deed), states in part that both the LLC and the grantors, Brian and Stephen Vetter, attested that the transfer was for no consideration other than the issuance of membership interests, the members of the LLC were Brian and Stephen Vetter; and that each members allocation of profits and losses between the grantors and the grantee was identical. According to Petitioner's legal counsel, this undertaking properly served the legislative purposes of the *Previous Legislation* located in Section 101.1 of the B.C.Z.R., which at that time defined "owner" as "a person . . . who has more than 25% legal or equitable interest in the property" and shared in 25% of the profits or losses of the property. The Greater Towson area neighbors, however, believe the LLC scheme to be a total sham and formed specifically to thwart the County's attempt to prevent illegal rooming/boardings houses. They fear the potential precedent that could attach to this case given the numerous other LLC's in the area.

It has been stated that it is the responsibility of the Zoning Commissioner to determine the intent of the legislature when construing any regulation/statue. In this case, it falls upon the undersigned to determine the intent of the Baltimore County Council when it enacted Section 101 of the B.C.Z.R. and adopted the language therein. (*Marzullo v. Kahl* 36 Md. 158, 175 [2001]). Interpretation of the zoning regulations and essential requirements for an unincorporated organization as set forth in Maryland Code, Corporations and Associations Article - Section 4A – 101 et. seq. is a daunting task and one made even more difficult given my respect for counsel who appeared in this case and presented excellent argument.

I will endeavor to do so by examining the words contained in the regulations and applicable definitions.

Paragraph A of B.C.Z.R. Section 101.1 under the *Previous Legislation*, defined a boarding house as follows:

“A. A building:

1. Which is the domicile of the owner and in which rooms with or without meals are provided, for compensation, to three or more adult persons not related by blood, marriage or adoption to the owner; or
2. Which is not the owner’s domicile and which is occupied in its entirety, for compensation, by three or more adult persons not related to each other by blood, marriage or adoption.”

The *Previous Legislation* defines the owner of a boarding or rooming house as follows:

“C. For the purposes of this definition only, “owner” means a person who:

1. Has more than a 25% legal or equitable interest in the property; and
2. Shares in more than 25% of the profits or losses derived from the compensation paid under Paragraph A. of this definition, as stated above.”

Under the *New Legislation* (effective April 19, 2009), pursuant to Baltimore County Council Bill 17-09, amended the definition of “owner” for boarding or rooming house purposes so that as of the effective date set forth above, an “owner” is defined as:

“an individual...who has more than a 50% legal or equitable interest in the property.” (See Petitioner’s Exhibit H).

B.C.Z.R Section 101.1 Word usage: definitions, defines word usage as follows:

“Words used in the present tense include the future; words in the singular number include the plural number; the word "shall" is mandatory. For the purposes of these regulations, certain terms and words are defined below. Any word or term not defined in this section shall have the ordinarily accepted definition as set forth

in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged.”

As the subject property qualifies as a building, and the words “domicile” and “persons” are undefined in the B.C.Z.R. as it relates to the boarding house, rooming house regulations, I must look to Webster’s Third New International Dictionary of the English Language, Unabridged, (Webster’s) for the purposes of statutory interpretation. Webster’s includes in the definition of a “person”,

“a corporation, partnership, or other legal entity that is recognized by law as the subject of rights and duties”.

Webster’s defines a domicile as both

“the principal place of doing business or maintaining an office of a corporation or business concern as registered in accordance with law” and “the place with which a person has a settled connection for important legal purposes such as jurisdiction to impose personal judgments or taxes on him.”

Thus, the LLC may qualify as a person, and the subject property may qualify as the domicile.

To determine the legislative intent of the Baltimore County Council in defining an owner under Council Bill 17-09 and Section 101.1 of the B.C.Z.R., I must look to the plain meaning of the statutory language. *See AllState Insurance Company v. Kim*, 376 Md. 276, 260, 829 A.2d 599 (2003). Integral to the Petitioner’s argument, and therefore their exemption from the boarding house, rooming house regulations is an analysis of their qualification as “owners” under the plain meaning of the definitional section of the B.C.Z.R as of the effective date of the *New Legislation*. It is uncontested by the parties that the LLC would not meet the requirements of the *New Legislation*.

## **I. Standard of Review.**

The standard of review for an administrative agency is whether a reasoning mind can reach a conclusion based upon the facts proven. *Nnoli v. Nnoli*, 101 Md. App. 243, 646 A.2d 1021 (1994). It is reasonable that in the face of overwhelming community concerns that the LLC is a sham, a reasoning mind must analyze the adherence of the LLC to the requisite corporate formalities required by Maryland law, and proof of proper admission and transfer of the existing membership interests of the LLC to both Steve Plimack and Joe Wascavage, in accordance with the requirements of the Corporations and Associations Article of the Maryland Annotated Code.

The subject property was first subject to a Code Enforcement proceeding on March 22, 2007 and on April 22, 2007, Code Enforcement Hearing Officer Raymond S. Wisnom, Jr., found the owner in violation of the B.C.Z.R. and ordered the owner to “reduce the number of unrelated tenants to 2 or so on or before July 1, 2007”. A certain number of tenants vacated the property. Thereafter, on September 21, 2007, the LLC was created to transfer ownership interests in the subject property from Stephen and Brian Vetter to the LLC in exchange for membership interests, meeting the requirements of the B.C.Z.R. and enabling Brian Vetter to continue his residence at the property and a mechanism to meet mortgage obligations. (*See* Petitioner’s Exhibit D). Pursuant to the Deed, the owner of the property is 16 Skidmore Court, LLC. Therefore, a condition precedent to qualification as an “owner” under the *Previous Legislation* by any other person – is evidence of assumption and distribution of 25% of the ownership interests in the LLC (the legal owner of the subject property) – to each person named as an owner by the Petitioner. On September 21, 2007, both Brian Vetter and Stephen Vetter met the statutory definitions of an “owner” under the B.C.Z.R. The LLC’s problems began in June of 2008, when they added more tenants exposing neighbors to additional noise, traffic congestion and decreased enjoyment of the neighboring owner’s rights.

In order to accomplish this purpose, Steve Plimack and Joe Wascavage were purportedly admitted to the LLC as owners under the B.C.Z.R. boarding/rooming house definitions. Petitioner has offered evidence of past and present operating agreements of the LLC to support their contention that Messrs. Wascavage and Plimack are and have been properly admitted as members of the LLC who could lawfully reside in the building with two (2) or more unrelated tenants. This assertion is the linchpin of the argument that the LLC has a lawful conforming use of the subject property under the *Previous Legislation* up and until the effective date of the *New Legislation*. The Petitioner has the burden of proof in proffering evidence of compliance vis-à-vis the definition of an owner as set forth in B.C.Z.R, up and until the effective date of the *New Legislation*.

It is a well-established canon of zoning law that where the evidence conclusively establishes that a property owner before and at the time of the adoption of the original zoning ordinance (or last comprehensive zoning) was using the property in question in a lawful manner, the owner had established a nonconforming use. *Board of Zoning Appeals of Howard County v. Meyer*, 207 Md. 289, 114 A.2d 626 (1955). Likewise, should a Petitioner be found noncompliant as of the effective date of the *New Legislation* a non-conforming use may not be granted.

**II. Joe Wascavage and Steve Plimack were not properly admitted members of the LLC and could not be deemed owners under the plain meaning of Council Bill 17-09 on the effective date of the *New Legislation*.**

While a limited liability company may have an oral operating agreement as set forth in the Corporations and Associations Article of the Maryland Code, Section 4A-402, certain consents as set forth in Section 4A-404 must be in writing, unless set forth in the initial operating agreement. The Corporations and Associations Article, Section 4A-402, Subsection (B) Part (2) states that if the operating agreement does not provide for the method by which the operating

agreement may be amended, then all of the members must agree to any amendment of the operating agreement, Part (3) states that an amendment to an operating agreement must be signed by an authorized person if: (i) the amendment was adopted without the unanimous consent of members; or (ii) an interest in the limited liability company has been assigned to a person who has not been admitted as a member.

The Petitioner has presented evidence that on December 30, 2008, an Amended and Restated Operating Agreement was executed (the First Amendment), with the intent of vesting three (3) individuals with interests in the LLC (and, therefore the subject property) of greater than 25%. The First Amendment presented by the Petitioner defined the owners and interests on December 30, 2008 as follows: Stephen Vetter (37%), Brian Vetter (37%), and Steve Plimack (26%). *See* Petitioner's Exhibit G. However, in the absence of other documentation, testimony or direct proof that the corporate documentation of the LLC permitted an amendment or transfer of the membership interests without written authorization, it is a permissible inference that this First Amendment which consists of a cover page and membership chart was executed in contradiction of the Maryland Annotated Code, as set forth below, as there was no authorized signature nor written documentation of unanimous consent to the transfer of membership interests by Brian Vetter and Stephen Vetter to Steve Plimack.

Further, in the absence of the delineation of the manner by which membership rights of the LLC may be transferred, assigned or provided to new members of the LLC in the initial operating agreement, or in a properly executed amendment thereto, the admittance of new members must be documented in accordance with Maryland law. The Corporations and Associations Article Section 4A – 404, states in part that wherever this title requires the unanimous consent of members to allow the LLC to act; (1) the consent shall be in writing; and

(2) the operating agreement may provide that the action may be taken on consent of less than all of the members or that the consent of certain members or classes is not required to take the action. Likewise, Section 4A – 601(B) (1) states that if new members acquire membership interests directly from the LLC, unanimous consent in writing is required. Assignment of membership interests are subject to the requirements of Corporations and Associations Article, Section 4A - 604, which also requires unanimous consent in writing by the members of a limited liability company. Whether Steve Plimack and Joe Wascavage were admitted, assigned or transferred ownership interests in the domicile of the owner, the LLC, it is clear that written authorization of existing members was required and was not evident on the First Amendment.

Petitioner's Exhibit J then evidences the transfer of 26% of the membership interests by and to Joe Wascavage from Brian Vetter, Stephen Vetter and Steve Plimack in an amendment to the operating agreement that was executed on May 14, 2009, that decreased Steve Plimack's purported ownership interests to 24% and added Joe Wascavage as a member to the LLC with a 26% ownership interest, (the Second Amendment).

While, the Second Amendment references the First Amendment, it may be argued that in the absence of a retroactivity clause, pursuant to Section 4A-601(b)(2) of the Corporations Article, the assignment to Steve Plimack of 26% of the ownership interest in the LLC was not effective until the unanimous consent of Brian Vetter and Stephen Vetter was evidenced in writing in May of 2009, which took effect approximately one month after the passage of the *New Legislation*. Further, while retroactivity clauses may be apropos in transactional and corporate law, it would be a slippery slope in zoning law to permit Petitioners to retroactively assist a party who is petitioning for a special hearing to obtain a declaratory judgment for a nonconforming use. Joe Wascavage's membership in the LLC did not occur until after the effective date of the

*New Legislation*. Therefore, the LLC was not using the subject property in a lawful manner at the time of the adoption of the *New Legislation*, a lawful nonconforming use has not been established and no impairment of vested rights, denial of due process or violation of the prohibition against ex post facto laws may be alleged. The facts clearly show that when the *New Legislation* became effective the subject property was a boarding house, rooming house in violation of the B.C.Z.R.

**III. Joe Wascavage and Steve Plimack did not meet the definition of owner as set forth in the regulations as there is no evidence that the members shared in the profits and losses of the LLC, whose sole income is the rent paid by tenants.**

Assuming arguendo, that the Second Amendment retroactively admitted Joe Wascavage as a member to the LLC with an ownership interest of 26% in accordance with the *Previous Legislation's* definitional section, the *Previous Legislation* defined "owner" as "a person . . .who has more than 25% legal or equitable interest in the property" **and** who shared in 25% of the profits or losses derived from the compensation paid to the owner. The Petitioner has not met its burden of proof by providing evidence of a sharing of profits or losses by and among those members other than Stephen Vetter, Brian Vetter and the LLC itself. While the *Previous Legislation* required that owners share in 25% of the profits **or** losses, I find that the Petitioner has provided evidence of neither. The Maryland Annotated Code requires at least a little evidence that Joe Wascavage and Steve Plimack have shared in both profits **and** losses of the LLC. The operating agreement of the LLC did not provide for a distribution by the members of profits or losses, and is therefore subject to the Corporations and Associations Article of the Maryland Annotated Code, Section 4A-503, Sharing of Profits, and losses; distributions, which requires and states in part:

“Except as otherwise provide for in the operating agreement:

- (1) the profits and losses of a limited liability company shall be allocated among the members in proportion to their respective capital interests.”

While this imposes a greater restriction on the LLC than is required by the *Previous Legislation*, it should be noted that B.C.Z.R. Section 600.1 provides for Interpretation and Validation of Provisions and states:

“In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations.”

Further, in the Memorandum of Law submitted by the Petitioner, the Petitioner stated that the sole source of income for the LLC is the rent paid by persons residing at the subject property. (See Petitioner’s Exhibit 1). As such, proof of the distribution of profits and/or losses of the LLC must include evidence of the distribution of rent payments, including those made by Joe Wascavage and Steve Plimack. While it may be argued that Brian Vetter’s profits and losses are evidenced by and through the payment of debt incurred on the subject property, no evidence has been provided that the rent paid by Joe Wascavage and Steve Plimack constituted a profit by both parties nor have financial statements or state and federal tax returns for the owners been submitted to contradict this inference. It is my task to resolve conflicting evidence and to draw inferences based upon that evidence. *Board of Phys. Quality Assur. V. Banks*, 354 Md. 59 (1999) citing *Marzullo v. Kahl*, 366 Md. 158, 172 (2001). The facts support the contention by the community that Joe Wascavage and Steve Plimack’s status as owners is a contrivance. Based upon this information, the “rent roll” proffered into evidence by the Petitioner on March 9, 2010

(marked as Petitioner's Exhibit 3), clearly shows that prior to April 19, 2009, the effective date of Bill 17-09, the subject property was a boarding house, rooming house in violation of the B.C.Z.R. The rent roll shows that between June of 2008 to the present, three (3) or more adult persons not related by blood, marriage or adoption to the owner paid rent to reside in the domicile of the owner, the LLC.

**IV. Even if Petitioner could demonstrate that the LLC had a lawful non-conforming use on April 19, 2009, the Second Amendment of the LLC's operating agreement unlawfully expanded the use of the property and abandoned the prior lawful non-conforming use on March 14, 2009.**

A change from an approved non-conforming use to an unapproved nonconforming use can terminate the owner's rights. *See Prince George's County v. E. L. Gardner*, 47 Md. App. 471 (1981). Should Petitioner provide evidence that Steve Plimack was an owner on April 19, 2009 as defined under the B.C.Z.R., the Second Amendment to the LLC's operating agreement, which was executed on May 14, 2009, decreased Plimack's ownership interest in the LLC to 24% beneath the required threshold making him ineligible for ownership under the B.C.Z.R. Boarding/Rooming House definition. The transmogrification of a lawful use of the subject property from a rental property housing one (1) to two (2) owners with two (2) tenants, to a property with one (1) owner, Joe Wascavage and three tenants, Steve Plimack, Christian Pastrick, and Steve Catalano, an unlawful use, is in direct violation and contradiction of the legislative purpose of B.C.Z.R. Section 101.1. The rent roll evidences that the LLC abandoned any prior lawful non-conforming use in existence.

B.C.Z.R. Section 104.1, Continuation of nonconformance; exceptions states:

“A nonconforming use (as defined in Section 101 of the B.C.Z.R.) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to resume the nonconforming use shall terminate.”

The Petitioner submitted evidence that an additional owner, Joe Wascavage, was admitted to the LLC as an owner subsequent to the effective date of the *New Legislation* expanding the use of the subject property.

Petitioner may argue that the increase in owners and tenants is an intensification rather than an expansion of a prior lawful nonconforming use of the subject property, similar to the increased use of a sports stadium for baseball games or the increased height of junk stored in a junkyard lot. *See Feldstein v. LaVale Zoning Board*, 246 Md. 204 (1967); *Green, et al v. Garret, et al.* 192 Md. 52 (1949). Petitioner may argue that the use increase caused by the addition of another owner at the domicile is similar to an increase in the number of decommissioned trucks kept on property owned by a trucking company. *County Commissioners of Carroll County v. Zent*, 86 Md.App. 745 (1991). I find that the addition of another owner is not an increase in volume. It is an increase in the use of the land in direct contradiction of the fundamental legislative purpose of the Boarding or Rooming House definition, which limits the number of tenants in a dwelling that is not subject to boarding house, rooming house regulations to two plus the owner who are unrelated by blood, marriage or adoption.

Petitioner may argue that the addition of an owner does not stray from the original nature and character of the nonconforming use, as the nature and character of the use of the land was not substantially changed. *See Trip Associates, Inc. et al v. Mayor and City Council of Baltimore*, 392 Md. 563, 579 citing *Feldstein v. Lavale Zoning Board*, 246 Md. 204, 211 (1967). This would be incorrect as the LLC was never conforming, the Second Amendment was executed subsequent to the effective date of the *New Legislation*, Steve Plimack cannot be considered an owner under the *Previous Legislation* and Joe Wascavage cannot be defined as an owner under the *New Legislation*.

The facts clearly show that even if the LLC had a lawful nonconforming use on April 19, 2009, Steve Plimack's disqualification as an owner abandoned the nonconforming use rendering him an additional tenant in violation of the B.C.Z.R. This expansion of a lawful non-conforming use is tantamount to a change from the non-conforming use, which I contend never existed, terminating the LLC's right to the non-conforming use. The addition of another owner undermines the essential purpose of the law to limit the number of persons residing in a building in a D.R. zone. Numeric and volumetric increases such as the height of junk or the number of decommissioned vehicles on commercial properties are materially different than the increase in residential density without registration as a boarding house, rooming house. The addition of tenants and owners to the subject property increases traffic congestion and noise nuisances to the adjacent property owners adversely impacting their quality of life. The legislative purpose of B.C.Z.R. Section 101.1 was not to create an off campus dormitory wherein tenants could enjoy the same rights as owners, with different occupants moving in and out of the property on a quarterly basis. The law does not favor the use of a kind of a "creeping" process or a creative expansion of a pre-existing right to evade zoning regulations. *Phillips v. Zoning Commissioner or Howard County*, 225 Md. 102 (1961). This expansion has continued for a period of more than one year constitutes abandonment under the B.C.Z.R.

### **Conclusion**

Based upon the testimony and evidence presented, I am not persuaded to grant the requested relief. Between June of 2008 and May of 2009, Joe Wascavage, Steve Plimack, Justin Malena, Eric Davis and Brian Vetter resided at the property in violation of B.C.Z.R, Sections 101 - Definition of Boarding or Rooming House; 102.1 - Conformance with Regulations; and 408B - Boarding and Rooming Houses in D.R. Zones; and failure to register the property as a

rental in a D.R. Zone. In my judgment, the Petitioner has not satisfied the requirements of Section 101.1 of the B.C.Z.R. There is a substantial evidence on the record submitted by the Petitioner to support a conclusion that the LLC has disregarded corporate formalities, to an extent that the purported membership in the entity and ownership by the renters Joe Wascavage and Steve Plimack may be disregarded and any lawful nonconforming use of the property both expanded in contravention of the B.C.Z.R. and abandoned by 16 Skidmore Court, LLC as set forth above. The facts in this case address the number of persons living at the subject property who meet the definition of an owner under the boarding house, rooming house regulations of the B.C.Z.R. prior to the passage of the *New Legislation*, and the definition of an owner under the *New Legislation* subsequent to abandonment and expansion of the non-conforming use. Strict compliance with the prior legislation would not impose a practical difficulty on the Petitioner in that a reasonable use of the land would be permitted, and relief can not be granted to the Petitioner without a detrimental impact to adjacent properties and community.

Testimony and evidence by neighboring property owners supports a finding that the Petitioner's continued use of the subject property in contradiction of the B.C.Z.R. is detrimental to the health, safety and general welfare of the locale involved, creates congestion in the roads, therein through the use of the subject property by an improper number of renters, overcrowds the land and causes an undue concentration of population in a D.R. zone, and is inconsistent with the subject property's zoning classification and the spirit and intent of the zoning regulations.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the existing dwelling use shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 2<sup>nd</sup> day of April 2010, that pursuant to the Petition for Special Hearing, requesting approval of

the subject dwelling as a legal nonconforming “boarding or rooming house” at the property known as 16 Skidmore Court, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioner shall cease the use of the property for the purposes of a boarding or rooming house within four (4) months of the date of this Order and return its use to that of a single-family dwelling thereafter. To assure compliance with this Order, the Petitioner shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management reasonable access to the building to ensure compliance.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County