

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
NE Corner of Burke and	*	OFFICE OF
Aigburth Avenues		
(200 East Burke Avenue)	*	ADMINISTRATIVE HEARINGS
9 th Election District		
5 th Council District	*	FOR
Anthony Mortis, Collenia Linzy and	*	BALTIMORE COUNTY
Helen Dortch		
Petitioners	*	CASE NO. 2012-0262-SPHA

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Anthony Mortis, Collenia Linzy and Helen Dortch. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking approval of a rooming and boarding house occupied by one of the legal owners and three additional unrelated individuals. The Petitioners are also seeking variance relief from Section 409.6.1 of the B.C.Z.R., to permit two parking spaces in lieu of the required five. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing held for this case were Petitioners Anthony Mortis, Collenia Linzy and Helen Dortch, Vincent Moskunas with Site Rite Surveying, Inc., the professional surveyor who prepared the site plan, and Michael K. Hourigan, Esquire, attorney for the Petitioners. Appearing in opposition to the Petitioners' request were many residents of the surrounding communities. These individuals are too numerous to specifically identify herein. However, all have signed in on the Citizen Sign-In Sheets. The file reveals that the

Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. The file contains letters of opposition from residents of the community as well as from the following associations: Towson Manor Village Community Association, Wiltondale Improvement Association, Inc., West Towson Neighborhood Association, Knollwood-Donnybrook Improvement Association, Inc.

This matter is currently the subject of a violation case (Case No. CO-106869) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. The fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested zoning relief.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Planning on May 24, 2012 indicating the following:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning **does not** support the petitioner's request for a rooming and boarding house. Currently the property is the subject of a code violation and the property may not have the appropriate rental registration documents or rental status. Furthermore, parking is a major concern for this community.

Consistent with the recommendation above, the Department of Planning also opposes the petitioner's request to permit 2 parking spaces in lieu of the required 5. The property has a 2-car garage, normally adequate for a single family home. Increasing the density of use without adequate on-site parking will be detrimental to the neighborhood. The subject property is located on a heavily traveled arterial street, therefore, on-street parking is minimal.

Testimony and evidence revealed that the subject property is 3,231 square feet (0.07 acres)

and zoned DR 5.5. Mr. Moskunas explained the site plan he prepared in connection with the Petition, and he described Petitioner's dwelling and the adjoining homes as "semi-detached" dwellings. See Exhibit 1. Petitioners testified they purchased the home in 2010, so that Mr. Mortis would have a place to live while he finished his degree at Towson University. They explained on-campus housing was very hard to locate, and that they purchased this home and made substantial improvements. They also testified that the three roommates helped to defray the cost of the home and expenses.

While Mr. Mortis and his mother (Collenia Linzy) appeared sincere and cooperative (i.e., Ms. Linzy spoke directly to the members of the community at the hearing and indicated she only needed the zoning relief for one year, until her son finished school), I am unable to grant the Petition in these circumstances, as explained below.

Under the B.C.Z.R., a boarding or rooming house (at least in this case, where the building is the domicile of the owner) is one in which rooms are provided to "three or more individuals" not related to the owner by blood or marriage. B.C.Z.R. § 101.1. Mr. Mortis testified he has three adult roommates, so 200 East Burke Avenue clearly qualifies as a "boarding house." Such a use is permitted in a DR zone "only in single-family detached dwellings." B.C.Z.R. § 408.B.1.B. The regulations define a single family detached dwelling as a "dwelling...surrounded by open space or yards and not attached to any other dwelling by any means." B.C.Z.R. § 101.1 (emphasis added).

As explained by Mr. Moskunas, 200 East Burke Avenue is in fact attached by a common wall – which in essence also separates the lots – to the neighboring dwelling known as 202 East Burke Avenue. Whether one refers to this type of dwelling as "semi-detached" or a "two family" dwelling is beside the point. What is clear is that the Petitioners' dwelling is "attached" by a common wall to another dwelling. As such, a rooming or boarding house cannot be operated on

the subject premises.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED, this 4 day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a rooming and boarding house, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 409.6.1 of the B.C.Z.R., to permit two parking spaces in lieu of the required five, be and is hereby DENIED AS MOOT.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:pz