

IN THE MATTER OF
WAYNE J. AND LISA S. KNELL - APPLICANTS

S/s Burke Avenue; 125' w/of c/l of Aigburth Ave.

(115 Burke Avenue)

9th Election District, 5th Councilmanic District

RE: Petition for Special Hearing

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CBA Case No.: 10-042-SPH

* * * * *

OPINION

This case comes to the Board on an appeal from a decision of the Deputy Zoning Commissioner (DZC) on a Petition for Special Hearing filed by Legal Property Owners, Wayne J. and Lisa S. Knell, which was denied. Petitioners sought relief pursuant to Sections 500.7 of the Baltimore County Zoning Regulations (BCZR) to approve a rooming house for a maximum of four (4) unrelated adults pursuant to Sections 408.B.1 and 502.1 of the BCZR. The Petitioners were represented at the hearing by Bruce E. Covahey, Esquire and the Protestants appeared *pro se*. People's Counsel participated and was represented by Deputy People's Counsel Carole S. Demilio. The hearing was held on May 11, 2010. Closing Briefs were submitted on July 3, 2010. The Public Deliberation was held on August 24, 2010.

Facts

The property in question is a rectangular property and contains approximately 6,000 square feet or 0.14 acres, more or less, zoned DR 5.5.; 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. The property has been in Mrs. Knells family since 1986 and has been consistently used as a rental home throughout the time period. Mr. Knell stated that the home contains four (4) bedrooms and two (2) baths and a full unfinished basement. There is a detached garage on the property at the end of a driveway that runs along the side of the property.

After taking title to the property, the Knells illegally converted the property to a four (4) bedroom boarding house and proceeded to rent it. It was occupied by four (4) Towson University undergraduate students. After complaints from the neighbors about noise and the clutter in the rear yard, the Knells were cited by Baltimore County for operating an illegal boarding house without a permit. Other violations were also found with respect to the unkempt nature of the property. The citation precipitated the current request for the zoning relief.

At the time of the hearing, the home was occupied by a family who was renting it from the Petitioners. The Petitioners are absentee landlords, and own an apartment house in Berlin, Maryland. The Petitioners presented a letter from the Mayor of Berlin and the Chief of Police in Berlin, indicating that they were a satisfactory landlord for the properties that they own in that town.

Petitioners testified with respect to the upgrades that they have made in the home at 115 Burke Avenue and also stated that there would be no parking in the alley to the rear of the home. The tenants park on the grass in the rear and presently use the alley for access and egress. The Petitioner intended to screen access to the alley by use of bushes. The Petitioners stated that they are concerned about problems with the neighbors and would make monthly inspections of the property. If the people who had signed the Lease were not following the conditions of the Lease,

they would be asked to leave. Petitioners presented a Rental Registration report indicating the properties in the immediate area of 115 Burke Avenue which were rental properties.

The Protestants who testified in the hearing were Paul Hartman, a member of the Aigburth Community Association and the current President of that Association. He stated that the Association had reviewed the request for the boarding house and had voted to oppose the permit. There are various problems with renting to students from Towson University, including vehicle parking in the area, trash, and the behavior of the students including large parties and late comings and goings of individuals at the boarding house. He cited Tiger Fest of April 24th, 2010 in which four (4) arrests and forty-eight (48) citations were issued. The students keep different hours than the normal residents in the area and come and go at all hours, early in the morning and late at night. He stated that the Association had no objection to renting to families who are not students, but he felt that allowing a boarding house in this area would lead to the licensing of other boarding houses and would cause a decline in the values of the properties in the Association in the community.

Ms. Joy Routson, who lived directly behind 115 Burke Avenue testified that she had been in her home for thirty-seven (37) years. She filed a complaint because two (2) cars were parked in the back yard and two (2) were parked in front. She called the Knells to ask about shrub removal and was told that the shrubs were cleared so that the students could pull out into the alley rather than on to Burke Avenue. She also testified that on New Years Eve she had to call for police at 2 o'clock a.m. because of a loud party at 115 Burke Avenue. Ms. Routson stated that the party broke up when the police arrived. She testified that she was afraid that the boarding house would degrade the value of her home and that there were no other boarding houses in the area. She had no problem with renting to a family, but not to students.

Mr. Edward Kilcullen also testified that he lived at Maryland Avenue and that he was familiar with the problems with students in the area. He thought it would be a dangerous precedent to allow a boarding house in the area and as President of the Greater Towson Council of Community Associations (GTCCA)), he opposed the granting of the license for a boarding house.

Judith Giacomo also testified that she lived at 17 Aigburth Road for twenty-six (26) years. She was a member of the Aigburth Community Association and she was familiar with the students problems. She stated that the Association opposed boarding houses every time a request has been made and that they, in fact, got rid of three (3) fraternity houses in the area. She also feared that the property values would decline as a result of the granting of the boarding house in the present situation and that other boarding houses would be licensed thereby lowering the value of homes in the neighborhood. She presented a list of individuals from the neighborhood who were present at the hearing. The list was accepted by the Board as Board Exhibit No.: 10. It contained the names of fourteen (14) individuals in the neighborhood of 115 Burke Avenue who opposed the granting of the license.

Decision

Section 408B.1A.2.e. of the Baltimore County Zoning Regulations (BCZR) states as follows:

- e. Following the public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon:
- (1) Findings following the public hearing.
 - (2) The character of the surrounding community and the anticipated impact of the proposed use on that community.

(3) The manner in which the requirements of this section and Section 502.1 and other applicable requirements are met and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the use will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of this section and Section 502.1 of these regulations.

Section 502.1 of the BCZR states:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

The burden of proof for compliance with Section 502.1 is on the Petitioner. After a review of the evidence and testimony taken in this matter, the Board has determined that Petitioner has not met that burden of proof and it will uphold the decision of the Deputy Zoning Commissioner. Petitioners presented a Rental Registration report indicating that there are number of rental properties in the area. With respect to Burke Avenue, the report showed that

there were thirty-six (36) units which were rental properties. Of those thirty-six (36) rental properties:

three (3) properties had three (3) to five (5) units involved,
two (2) others had two (2) units; and
the rest were single units.

The itemization indicates that boarding houses were not prevalent in the immediate Burke Avenue area.

The testimony from neighbors show that when the home was rented to students, the trash was allowed on the front lawn and noisy parties took place at the home. In addition, the cars parked on the property indicate that at least each individual had a vehicle that would be parked on the property and were unsightly.

The Board has determined that under Section 502.1A., the licensing of a boarding house would be detrimental to the health, safety or general welfare of the locality involved. The testimony with respect to the New Year's Eve party, the trash and the utilization of the alley for entrance and exit to the property from the rear, would grossly effect the neighbors. In addition, under Section 502.1D., the Board feels that a Boarding House on this property would tend to overcrowd the land and cause the undue concentration of population by allowing four (4) individuals, particularly with automobiles to live in the home, which is currently being occupied by one (1) family. The Board feels it would be inconsistent with the purposes of the zoning property classifications and inconsistent with the spirit and intent of the zoning property regulations to allow a boarding house in this particular area. Testimony that establishing a boarding house in this situation would be a "slippery slope" which would eventually lead to additional boarding houses thereby lowering the property values; is given considerable credit by

the Board. In addition, under the seminal case of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), the Board finds that a boarding house at this location would have more of an adverse effect than a boarding house at some other location within the D.R. 5.5 zone.


ORDER

THEREFORE, IT IS THIS 10th day of September, 2010 by the Board of Appeals of Baltimore County

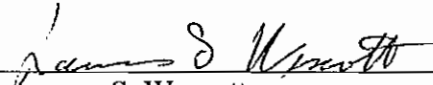
ORDERED that the Petitioners Request for Special Hearing relief filed pursuant to §500.7 of the Baltimore County Zoning Regulations (BCZR) for a rooming house for a maximum of four (4) unrelated adults, pursuant to §408.B.1 and §502.1 of the Baltimore County Zoning Regulations (BCZR) be and the same is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

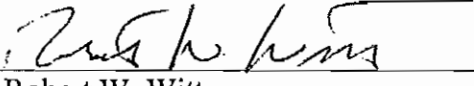
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence M. Stahl, Chairman



Lawrence S. Wescott



Robert W. Witt