

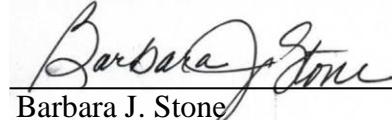
*NOTICE OF FINAL DECISION
OF BOARD OF APPEALS*

RE: Case No. V-82-17 Jacob Asher and Kendra Hathaway

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: September 27, 2017.

CERTIFICATE OF SERVICE

This is to certify that on May 1, 2018, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Barbara J. Stone
Barbara J. Stone
Administrator

cc: Petitioners
Adjoining Property Owners
DPIE/Enforcement Division
Office of Law
Other Interested Parties
BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND

Sitting as the Board of Zoning Appeals

Petitioners: Jacob Asher and Kendra Hathaway

Appeal No.: V-82-17

Subject Property: Lot 6, Navy Day Subdivision, being 3309 Navy Day Drive, Suitland,
Prince George's County, Maryland

Witnesses: Jordan Brooks, Office of Law

Saverio Cappetta, Inspector, Department of Permitting, Inspections and Enforcements (DPIE)

Rene Palacios, DPIE, Rental License

Bill Edelen, DPIE, Code Enforcement

Sarah Cavitt, Indian Head Highway Area Action Council

Heard: September 13, 2017; Decided: September 27, 2017

Board Members Present and Voting: Bobbie S. Mack, Chairperson

Albert C. Scott, Vice Chairman

Anastasia T. Johnson, Member

RESOLUTION

Pursuant to Section 27-229(a) of Subtitle 27 of the Prince George's County Code (the "Zoning Ordinance"), this appeal was brought to the Board of Appeals, sitting as the Board of Zoning Appeals for the Maryland-Washington Regional District in Prince George's County, Maryland (the "Board"), from the determination of the Property Standards Inspector, Department of Permitting, Inspections and Enforcement, Enforcement Division, to issue Zoning Violation Notice CSD 17-00029787 dated March 28, 2017, citing Petitioners with violation of Housing Code Sections 13-181 and 13-183 and Zoning Ordinance Sections 27-253(a)(1), 4-118(c) and 27-441(a)(7) (operation of a business for short term rentals and/or renting a residential dwelling, bedroom, sleeping area, floor/property space or garage without a Final Use and Occupancy Permit and/or Rental License issued by the Department of Permitting, Inspections and Enforcement is **NOT** permitted) and requiring Petitioners to cease operating a business for short term rentals without a Final Use and Occupancy Permit and/or Rental License, on R-55 (One-Family Detached Residential) zoned property located at Lot 6, Navy Day Subdivision, being 3309 Navy Day Drive, Suitland, Prince George's County, Maryland.

Evidence Presented

The following testimony and record evidence were considered by the Board:

1. The subject property contains 6,200 square feet, is zoned R-55 (One-Family Detached Residential) and is improved with a single-family dwelling.
2. Petitioners received a renter's license (#2837464) for the single-family dwelling on the subject property.¹

¹ Section 13-138(a)(12) states that a "Single-Family Rental Facility" shall mean any building, structure, or combination of related buildings, structures, and appurtenances operated as a single entity or a condominium, in which the landlord provides, for a consideration, one or more rental dwelling units not licensable under the Multifamily Rental Facility provisions; but shall not be construed to mean any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities, or any other facilities operated for religious or eleemosynary

3. The Department of Permitting, Inspections and Enforcement (DPIE) received several complaints related to certain rental activities at the subject property. DPIE Inspector Saverio Cappetta investigated the complaints and Petitioners informed the inspector that they were operating an Airbnb.

4. DPIE issued Violation Notice, dated March 28, 2017, stating that Petitioners were operating an "AIRBNB facility" in violation of several provisions of the County Code, including Section 27-441(a)(7).

5. Inspector Edelen explained that an Airbnb is a (commercial) platform used to obtain short-term renters and the County had become inundated with complaints, including the "in and out" activities stemming from the subject property.

6. Ms. Kendra Hathaway contends that operation of an Airbnb is not illegal because there is no definition of what constitutes short-term rental in the County.

7. Mr. Jacob Asher testified that he has combed through the "codes and ordinances" of the County to obtain the definitions of transient housing and short-term rental without any success. He agreed that he engages in short term rental but stated that if there is no definition of short-term rental license (in the law), he cannot be in violation of a definition that does not exist.

8. Mr. Edelen stated "Airbnb" is not listed in the County Code but that Section 27-441 (a)(7) prescribes that any use of a dwelling that is not listed in the County Code is not permitted.

9. Sarah Cavitt of the Indian Head Highway Area Action Council stated that there are three Airbnbs operating in her immediate area and some have caused damage to neighboring homes.

10. Mr. Asher explained that an Airbnb may be rented for one night, but a responsible Airbnb owner restricts the use of the dwelling including "no events or parties, no extra guests beyond the renters themselves". He stated that there is a minimum limit of guests allowed and he does not rent for one or two nights because those are the ones who come in for a party.

11. Jordan Brooks, Office of Law, stated that if Petitioners operated a business on the property, a use and occupancy permit must be obtained² but operating an Airbnb is not a permitted use because it is not a specified use under the County Code. She described an Airbnb as used to obtain short-term accommodations for travelers and such use constituted transient housing which caused the issuance of the Violation Notice. She stated that there has not been a revocation hearing for Petitioners' rental license because the instant appeal was filed. She stated that the single-family rental license definition in the County Code contemplates a dwelling, rented, but not used for transient housing, hotels or very short-term stays.

Findings of the Board

After hearing all the testimony and the evidence adduced, the Board finds that:

1. Petitioners testified that an Airbnb business was in operation at the subject property.
2. Section 27-441 of the County Code prescribes the uses permitted in the County. Section 27-441(a) adds that no use shall be allowed in the Residential Zone, except as provided for in the Table of Uses. Section 27-442 (a)(7) specifically states that all uses not listed are prohibited.
3. An Airbnb is not a listed use within the Table of Uses.
4. The current commercial operation of an "Airbnb" at the subject property is, therefore, not a permitted use within the R-55 Zone.
5. Operation of a business for short term rentals and/or renting a residential dwelling without a Final Use and Occupancy permit and Rental License issued by DPIE is not permitted.
6. No permit has been issued for the business described.

purposes, and projects authorized under 10 U.S.C. 2828, which allows the U.S. Government to lease housing facilities at or near a military installation for assignment, without rental charge, as family housing for members of the Armed Force.

² See, Section 13-181 of the Housing Code; Section 253(a)(1) of the Zoning Ordinance.

7. The Board finds that there is substantial evidence to support the issuance of the Violation Notice.

BE IT THEREFORE RESOLVED, unanimously, that the determination of the Code Enforcement Officer, Department of Permitting, Inspections and Enforcement, Enforcement Division, to issue Zoning Violation Notice CSD 17-00029787, dated March 28, 2017, be and is hereby AFFIRMED.

BOARD OF ZONING APPEALS

By: (Original Signed)
Bobbie S. Mack, Chairperson

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.