



**APPROVED MINUTES OF THE REGULAR SESSION OF
THE HOUSING BOARD OF APPEALS OF THE CITY OF ANN ARBOR, MI
100 NORTH FIFTH AVENUE - SECOND FLOOR – CITY COUNCIL CHAMBERS
SEPTEMBER 11, 2007**

The meeting was called to order at 3:00 p.m. by Ron Suarez

ROLL CALL

Members Present: (6) A. Stuart L. Wessinger, M. Goldstein,
C. Christiansen, D. Fleece and R. Suarez

Members Absent: (0) (One vacancy exists)

Staff Present: (4) R. Fulton, K. Chamberlain, K. McDonald and
B. Acquaviva

**A. APPROVAL OF AGENDA – To Amend the Agenda to hear Appeal Number
2007-H-005, 419 East Kingsley prior to the Closed Session.**

“Moved by C. Christiansen, Seconded by M. Goldstein, **“that the agenda be
approved as amended”**”

On a Voice Vote – MOTION PASSED - UNANIMOUS

B, APPROVAL OF MINUTES

Minutes of the June 6, 2007 Regular Session –

Moved by L. Wessinger, Seconded by C. Christiansen, **“to approve the minutes
of the June 6, 2007 Regular Session as amended.”**

On a Voice Vote – MOTION PASSED – UNANIMOUS

*Note: L. Wessinger informed the Board that she must recuse herself as she is related to the
applicant for C-2. (L. Wessinger leaves Council Chambers during appeal).*

C. APPEALS & ACTION

C-2 2007-H-005 – 419 East Kingsley Street

The applicant, James Wessinger, seeks to obtain a Housing Board of Appeals Variance from the
grade requirement of the Ann Arbor Housing Code to use a cellar space as two bedrooms.

Background

This is a single family dwelling with one bedroom on the first floor and four bedrooms on the
second floor. The R4C zoning allows a maximum occupancy of six unrelated people. In 1998,
the required permits were obtained to finish two rooms in the cellar. The permit specifically noted
that the rooms would not be used as bedrooms. In 1999 and 2007, the Housing Inspection
Report cited the unapproved use of the two rooms as bedrooms and ordered them vacated. A
radon test has been conducted with a level of 2.3 pCi/l. The sanitary sewer has been cleaned.

**Housing Board of Appeals Minutes
September 11, 2007.**

Section 8:503(6) of the Ann Arbor Housing Code prohibits the use of a cellar as habitable space unless approved by the Housing Board of Appeals based on a city inspection report showing that certain standards have been met. An inspection was conducted and the results were summarized on the Cellar Requirements Worksheet presented to the Board.

Standards for Approval

a. Practical difficulties or unnecessary hardship

The R4C zoning of this property allows a maximum occupancy of six unrelated people. Prohibiting the use of the cellar as a bedroom would require one of the tenants to have to “double up” in one of the other bedrooms in the house. Also, staff believe that the unapproved use as bedrooms will likely continue. Granting the variance will provide a higher level of health and safety for the residents by ensuring that the radon levels are within EPA limits and that the sanitary sewer is cleaned at least every three years.

b. The variance does not violate the intent of this chapter

The first purpose of the Ann Arbor Housing Code is to protect the health, safety and welfare of residents. By complying with the Cellar Requirements Worksheet, this will be achieved.

c. The variance does not jeopardize the public health and safety

Public health and safety will not be jeopardized because smoke detector, egress, electrical, sanitary sewer and radon requirements have been met.

Recommendation: Staff recommends the following:

Motion to approve a variance from the grade requirements of the Ann Arbor Housing Code in order to allow the use of two rooms in the cellar as bedrooms because all of the requirements of Section 8:503(6) have been met.

Petitioner Presentation:

Mr. James Wessinger was present to speak on behalf of the appeal. He stated that he seeks approval of a change of use of two study rooms to bedroom. They were converted nearly ten years ago and inspected by city housing inspectors and the Board examined them today. I hope the rooms meet with your approval.

Questions of Staff by the Board – None.

Discussion by the Board

MOTION

Moved by A. Stuart, Seconded by D. Fleece, **“to grant a variance for Appeal Number 2007-H-005, 419 East Kingsley Street from Section 8:053 (6) (Use of Cellar Occupancy as Habitable Space) to grant the use of the cellar as habitable space.”**

On a Voice Vote – MOTION PASSED – UNANIMOUS (Variance Granted)

(L. Wessinger Returns to meeting at 1:59 p.m.)

CLOSED SESSION TO DISCUSS ATTORNEY/CLIENT PRIVILEGED INFORMATION

Moved by C. Christiansen, Seconded by D. Fleece. **“to Move to Closed Session.”**

On a Roll Call Vote – The vote was as follows:

(YEA) - R. Suarez, D. Fleece, A. Stuart, L. Wessinger, M. Goldstein, C. Christiansen
(UNANIMOUS) - Closed Session began at 2:00 p.m.

Moved by D. Fleece, Seconded by L. Wessinger, **“to return to Regular Session.”**

On a Voice Vote – MOTION PASSED – UNANIMOUS (The Board reconvened at 2:45 p.m.)

C-1 2007-H-006 – 1205 East University Avenue

The owner of this property, Chester Roble, seeks to obtain a Housing Board of Appeals Variance from the grade requirements of the Ann Arbor Housing Code in order to use a cellar space as a bedroom and a common room/study.

Background

This is a single family dwelling with one bedroom on the first floor and three bedrooms on the second floor. The R4C zoning allows a maximum occupancy of six unrelated people. Mr. Roble notes in his application that the cellar has been in its current condition since the owner obtained the property in 1989. In 1993, the Housing Inspection Report described the cellar as not habitable space and noted that two cellar rooms were being used as studies.

In 1996, the report also described the cellar as not habitable space, cited the unapproved use of the two rooms as bedrooms and ordered them vacated.

In 2006, the two rooms were again cited for unapproved use as bedrooms and ordered vacated. Mr. Roble indicates that by removing the suspended ceiling and installing drywall to the bottom of the joists, the ceiling height in the common room/study will meet code (6’8”), the ceiling height in the bedroom will be increased to 6’6”, and the headroom in the stairway leading from the bedroom will meet code (6’0”).

Section 8:503(6) of the Ann Arbor Housing Code prohibits the use of a cellar as habitable space unless approved by the Housing Board of Appeals based on a city inspection report showing that certain standards have been met.

Standards for Approval:

a. Practical difficulties or unnecessary hardship

The R4C zoning of this property allows a maximum occupancy of six unrelated people. Prohibiting the use of the cellar as a bedroom and as a common room/study would create an unnecessary hardship for the tenants by limiting the amount of habitable space available for their use and would lead to tenants having to “double up” in the

155 other bedrooms in the house. Also, there is a well-established history of unapproved
156 use of the cellar as bedrooms. Staff believes this is likely to continue.
157 Granting the variance will provide a higher level of health and safety of the residents by
158 ensuring compliance with the requirements of the Housing Code.
159

160 **b. The variance does not violate the intent of this chapter**

161
162 The first purpose of the Ann Arbor Housing Code is to protect the health, safety and
163 welfare of residents. By complying with the Cellar Requirements Worksheet, this will
164 be achieved.
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166 **c. The variance does not jeopardize the public health and safety**

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168 Public health and safety will not be jeopardized because smoke detector, egress,
169 electrical, sanitary sewer and radon requirements must be met prior to the granting of
170 this variance.
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172 **Recommendation:**

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174 Staff recommends the following motions:

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- 176 1. Motion to approve a variance from the 6'8" ceiling height requirements of section 8:503 to
177 allow a ceiling height of 6'6" in the front room.
 - 178 2. Motion to approve a variance from the 27" stairway width requirements of section 8:504 to
179 allow a width of 24" in the stairway leading to the kitchen.
 - 180 3. Motion to approve a variance of ½ square foot for the light requirements and ¼ square foot
181 for the ventilation requirements to allow the existing light and ventilation in the bedroom.
182
 - 183 4. Motion to approve a variance from the requirements of section 8:503(6) to allow the front
184 cellar room to be used as a bedroom and the middle room to be used as a common
185 room/study with the following contingencies:
 - 186 a. Replace the suspended ceilings in both rooms with drywall and ensure a
187 minimum 6'8" ceiling height in the middle room, minimum 6'6" ceiling height in
188 the front room and minimum 6'0" headroom in the stairway leading from the front
189 room.
 - 190 b. Have a licensed electrical contractor install additional outlets in each of the
191 rooms as required to meet the new construction code (electrical permit
192 required); have this contractor ensure the existing outlets meet the new
193 construction code.
 - 194 c. Ensure there is an approved emergency escape window in the common
195 room/study.
 - 196 d. Ensure adequate light and ventilation in each of the rooms.
 - 197 e. Ensure adequate combustion air in the furnace/water heater room.
 - 198 f. Install hardwired interconnected smoke detectors with battery backup as follows:
199 one in the common room/study and one in the bedroom.
 - 200 g. Clean the sanitary sewer.
 - 201 h. Provide acceptable radon test results from a qualified contractor.
 - 202 i. Ensure there is no locking device on the door to the common room/study so that
203 access to the electrical panel is maintained.

- 204 j. Increase the size of the window wells for the bedroom and common room/study:
205 the existing widths may remain but the distance away from the building must be
206 a minimum of 36" (building permit required).
207 k. Sixty days to complete work, no occupancy until all work completed and verified.
208

209 R. Fulton – Stated that the Board may consider adding an additional variance. At the walk-
210 through on the site visit, she measured the stair treads for the small stairway out of the proposed
211 bedroom (front one) to the exterior door and also measured the back stairway from the cellar
212 outside the storage room up to the first floor that leads to the kitchen, and those are 8 inches, and
213 the code requires that those be a minimum of 9 inches in depth.
214

215 In addition, the locking device in question is between the proposed bedroom and study (door into
216 the study) NOT have a lock on it on the STUDY SIDE. (The Board was concerned that this
217 particular corridor not have any locks between the study and proposed bedroom.) Mr. Roble
218 confirmed that just the direction of the lock must be changed in this corridor.
219

220 A. Stuart – Proposed that the Board add letter 'k' to the recommendations for a handrail on the
221 stairway to the outside. (*The Board also discussed the egress window, recessed lighting in the*
222 *bedroom and safety issues.*)
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Petitioner Presentation

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226 Mr. Chester Roble was present to speak on behalf of the appeal. He stated that he was
227 appreciative of the recommendations made by Staff and the Board.
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Questions of Staff by the Board

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231 L. Wessinger (To R. Fulton) – Are we requiring the work in the study room – which involves the
232 ceiling and extending the window well. Are we doing that because we think that it'll still be used
233 as a bedroom, so we're making sure it's as close to a legal bedroom as possible? If this is just a
234 study room, there's no reason to do anything.
235

236 Rita – You're correct, but history in many properties shows that kids do end up using that space,
237 so we do want to make it as safe as possible. As far as the ceiling height, I feel that that should
238 be raised too. If you look at how short that is (a board member nearly hit her head on the fixture
239 at the walk through), it would be best to get that to the maximum to make it safer.
240

241 L. Wessinger – Did you remove the requirement for the window well to be extended – (R. Fulton -
242 I did not.)
243

244 A. Stuart – Stated that they could leave the common area open, otherwise the driveway would be
245 a dangerous situation.
246

247 L. Wessinger – This would also duplicate the already approved egress of the doors, which is right
248 next to the window. (R. Fulton – The stairs there would then require a variance for the tread, as
249 neither stair meets approved egress. This will be your decision.)
250

251 R. Suarez – Mentioned that he thinks the ceiling lights need to be replaced with recessed lights.
252 (Petitioner – Stated that he plans to do recessed lighting in the bedroom, but that the existing
253 lamp in the common room would go up three inches and be out of the way.)

254 Discussion by the Board

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256 MOTION #1

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258 Moved by A. Stuart , Seconded by L. Wessinger “that a variance be granted for Appeal
259 Number 2007-H-005, 1205 East University from the 6’ 8” ceiling height requirement of
260 Section 8:503, to allow a ceiling height of 6’6” in the front room, provided that the ceiling is
261 replaced with drywall (decreasing the current height). There shall also be a minimum of 6’
262 of headroom from the stairway leading from the front room. A hard wired, interconnected
263 smoke detection system (with battery back up) will be required as follows; one (1) in each
264 of the following rooms - the Common room, Study and Bedroom. Petitioner will have sixty
265 days to comply – No occupancy until work is completed and verified.”

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267 On a Voice Vote – MOTION PASSED – *UNANIMOUS*

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270 MOTION #2

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272 Moved by A. Stuart Seconded by L. Wessinger, “that a variance be granted for Appeal
273 Number 2007-H-005, 1205 East University from the 27” stairway width requirement of
274 Section 8:504, to allow a width of 24” in the stairway leading to the kitchen, provided that a
275 hard wired, interconnected smoke detection system (with battery back up) will be required
276 as follows; one (1) in each of the following rooms - the Common room, Study and
277 Bedroom. Petitioner will have sixty days to comply – No occupancy until work is
278 completed and verified.”

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280 On a Voice Vote – MOTION PASSED – *UNANIMOUS*

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283 MOTION #3

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285 Moved by A. Stuart Seconded by L. Wessinger, “that a variance be granted for Appeal
286 Number 2007-H-005, 1205 East University to approve a ½ sq. ft. shortage for the light and
287 ¼ sq. foot shortage for ventilation requirements, to allow the existing light and ventilation
288 to remain the way it is in the front bedroom.”

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290 On a Voice Vote – MOTION PASSED – *UNANIMOUS*

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293 MOTION #4

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295 Moved by A. Stuart, Seconded by L. Wessinger, to grant a variance for Appeal Number 2007-
296 H-005, 1205 E. University for the 8 inch stair treads on the front stairway that leads to the
297 outside and the back stairway that leads to the kitchen, provided that a hard wired,
298 interconnected smoke detection system (with battery back up) will be required as follows;
299 one (1) in each of the following rooms - the Common room and Bedroom. Petitioner will
300 have sixty days to comply – No occupancy until work is completed and verified.”

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302 On a Voice Vote – MOTION PASSED – *UNANIMOUS*

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MOTION #5

Moved by A. Stuart, Seconded by L. Wessinger, “that a variance be granted for Appeal Number 2007-H-005, 1205 East University from the requirements of Section 8:503(6), to allow the front cellar room to be used as a bedroom and the middle room to be used as a common room/study with the following contingencies:

- a. Suspended ceilings in both rooms be removed and replaced with drywall, to ensure a minimum of 6’ 8” ceiling height in the middle room, minimum 6’6” ceiling height in the front bedroom, and a minimum of 6’0” headroom in the stairway leading to the front bedroom.
- b. A Licensed Electrical Contractor will install additional outlets in each of the rooms as required to meet the 2003 building code. (Electrical Permit Required.) The contractor will ensure that the existing outlets meet this construction code as well.
- c. Common room study – Egress window is approved. (MAINTAIN EXISTING)
- d. Ensure adequate light and ventilation in the each of the rooms, except for those already stipulated in the previous variance granted.
- e. Insure adequate combustion air in the furnace/water heater (Mechanical) room and to get adequate documation for such from a qualified Mechanical Contractor.
- f. Install hard wired, interconnected smoke detection system (with battery back up) as follows: one (1) in each of the following rooms - the Common/Study and Bedroom ~~and to be able to show adequate documentation from a Mechanical contractor.~~ **Electrical Permit Required.**
- g. Clean the sanitary sewer and show documentation.
- h. Provide acceptable radon tests from a qualified contractor.
- i. Ensure that there is no locking device on the door to the Common/Study room so that access to the electrical panel is maintained. Front room door and door between the front room and the legal bedroom will not have a lock on the study side, so that the occupant of the bedroom can get to the electrical panel.
- j. Increase the size of the window well for the Common/Study room. The existing width may remain, but the distance away from the building must be at least 36” (Building Permit required.)
- k. An approved handrail or guardrail be installed on the stairway to the outside of the front bedroom. Petitioner will have sixty days to comply – No occupancy until work is completed and verified.”

On a Voice Vote – MOTION PASSED – ***UNANIMOUS*** (Variances Granted).

OLD BUSINESS

D-1 2007-H-003-ADMIN. – 1025 Vaughn Street

Quail Hollow, L.L.C., seeks to obtain a Housing Board of Appeals **Administrative Review** regarding the use of other rooms (living room, living room/kitchen, kitchen and/or other areas not specifically excluded in 8:505) to be used for sleeping purposes. The owner also requests an Administrative Review on the definition of “range or similar device designed for cooking food” as required for kitchens with the basic question of whether a microwave meets the criteria of a “similar device”.

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Background with Staff Description and Discussion:

Prior to the December 7, 2006, this building was inspected as a 3 unit building. Since the previous certificate of compliance, the building was converted under permits into two units. A 3-bedroom unit is on the first floor and the other is a 6-bedroom unit, which comprises the 2nd and 3rd floors.

Section 8:503(1e) of the Ann Arbor Housing Code does allow tenants to use areas other than bedrooms for sleeping as long as the written lease specifies the number of bedrooms in the unit and the room complies with the smoke detector and exit requirements of the Ann Arbor Housing Code. Section 8:503(5) of the Ann Arbor Housing Code states that every unit must have a kitchen and except in efficiencies, food shall not be prepared or cooked in any room used for sleeping purposes.

Standards for Approval:

d. Practical difficulties or unnecessary hardship

Sleeping areas: No practical difficulties or unnecessary hardship.
Cooking devices: Allowing a microwave as the only cooking device for food preparation would greatly limit the type of food preparation that could be accomplished by the tenants.

e. The administrative review does not violate the intent of this chapter

The primary purpose of the Ann Arbor Housing Code is to protect the health, safety and welfare of residents. By the continuance of prohibiting the use of kitchens and other unapproved areas for sleeping areas as designated by code, this will be achieved. Also by using approved range or similar devices designed for cooking food, which does not include microwaves, the primary purpose would be achieved.

f. The administrative review does not jeopardize the public health and safety

Public health and safety will not be jeopardized as long as the administrative review does not allow sleeping in kitchens (except in efficiencies) and other areas besides bedrooms that do not comply with the smoke detector and exit requirements of the Housing Code. The review must also ensure that the acceptable cooking devices are installed in kitchens for food preparation.

Recommendation:

1. Motion that any administrative decision made contrary to current inspection practices be granted for only this property (1025 Vaughn St.).
2. Motion to deny use of kitchen (except in efficiencies as allowed in the Housing Code) as an approved sleeping area.
3. Motion to deny use of a microwave as meeting the definition of the required "range or similar device designed for cooking food" as required in kitchens.

NOTES:

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407 1. Currently, microwaves are allowed in rooming units because they are not
408 considered to meet the definition of a range or similar device designed for cooking
409 food.

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411 If microwaves are allowed as an official similar cooking device to a range, then
412 microwaves will be banned from every room except for kitchens.

- 413
414 2. Using an international code standard, the 2006 International Property Maintenance
415 Code states (note exception #2):

416
417 **403.3 Cooking facilities.** *Unless approved through the certificate of occupancy, cooking shall not*
418 *be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be*
419 *permitted to be present in the unit or dormitory units.*

420 **Exceptions:**

- 421 1. *Where specifically approved in writing by the code official.*
422 2. *Devices such as coffee pots and microwave ovens shall not be considered cooking*
423 *appliances.*

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425 **Questions to Staff from the Board:**

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427 L. Wessinger (To K. McDonald) – How much of our legal advice are we expected to share with
428 the petitioner at this meeting. Is that now available to him? (K. McDonald – City Attorney’s Office
429 – The advice we provided you was to provide at least a solid legal understanding of the meaning
430 of the issues that we were asked about. That certainly is for the Board’s use, you can use that
431 advice as you like in discussing your decision here with the public, but I should be very clear that
432 our advice was for your use.

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434 It’s certainly something you can use, but it’s your discretion the decision that you want to make
435 today. I would just remind you that the actual ‘memo’ that we provided you was certainly
436 privileged and confidential information, but as it goes toward your discussion today, if that’s going
437 to inform your meaning of these things for your discussion, you’re welcome to talk about it in a
438 general manner.)

439
440 **Petitioner Presentation**

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442 Mr. Alloys Metty, resident agent for the owners Quail Hollow L.L.C., was present to speak on
443 behalf of the appeal. He stated that he spoke a few months ago on this issue and wants to make
444 something clear. The staff report contained that we were requesting a variance – I’m not
445 requesting a variance – at all – I don’t want a variance. What I came to this Board for, was that I
446 believed that this particular Housing code is being misinterpreted and that’s what I want, a
447 clarification of it.

448
449 The issue of the microwave came up and that was circular logic – you can have it in rooming
450 houses, and you can have a coffee pot in rooming houses, and you can have refrigerators in
451 rooming houses, and if we allow them to have a microwave as a cooking device and a stove, well
452 that would violate everything else we’re doing. I know that they refer to the 2006 International
453 building code (and I don’t believe that has been adopted by the City of Ann Arbor as one of your
454 codes), there seems to be a reference point out that, but.....

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457 The microwave is not my big issue, I may get back to that at another time. The idea that this
458 situation prevents any kind of a health, safety or welfare issue to any residents is just ludicrous.
459 It's hypocritical to say that you can stay in an efficiency in a kitchen, but it's not safe to do so in a
460 house. I don't see how the health and safety issue come in at all. If it's a health and safety issue
461 in one, it's a health and safety issue in the other – that's just plain logic on it. I'm also not looking
462 for an exclusion on this particular property. I'm not asking for that, I really don't want that. As I
463 said before, I don't think the kids should sleep in a kitchen, but that's between the tenant and
464 myself, that's not between the city.
465

466 There are places in the code that kids are prohibited from sleeping – specifically. Kitchens, living
467 rooms and dining rooms are not. If you have a person that stops over for the night, what you're
468 saying is – they can't sleep on a couch, because then it becomes a sleeping room. Code 8:503
469 (1e) (I believe that's the particular code section) was put in as a 'repair' to the code years ago
470 because kids were doing it this way. I was a part of the group that talked about this and sat on
471 that committee and this was put in because we said we can't regulate the kids – kids are kids, but
472 what we want to do is make it safe. They can use the place as they want to use the place, but
473 let's make it safe. Let's make sure there's a smoke detector and there is a second means of
474 egress. Some areas were ... 'you can't sleep in the bathroom or attics or cellars. Those were
475 specifically put in to keep kids from sleeping there – but not living rooms and kitchens – as much
476 as that is an extension of that, or it's just not defined, I think they can sleep in kitchens too. I think
477 that the repair to this, if the city wants to do so, is to simply say "you can't sleep in the kitchen or
478 you can't sleep living room." But this code simply doesn't do that right now.
479

480 This issue has cost me in excess of \$15,000.00. As soon as the tenants got this letter, they went
481 to student legal services, and student legal services said, "Hey, withhold your rent." Well, any
482 student is going to do that in a second with that kind of advice. We since settled that they would
483 pay their rent, but it still cost me \$15,000.00. It took quite a while trying to talk to the Building
484 Department about this, but all I received was threats of court appointed tickets. I received those
485 after I appealed to you (the HBA) as this was my next step on the thing. Just to get this pair of
486 tickets stopped on it – there has been no explanation why you can't sleep in a kitchen or a living
487 room. The code referred to failed to even give a code section. It's just that interpretation that
488 'you can't do it.' The code inspection letters are supposed to give the section that you're in
489 violation of. This prevents the inspectors from making up codes (not that they do), but this gives
490 everyone reference points. I know what rules I'm playing by. I can't go to the code book and find
491 this rule that says I can't do it. I want you to interpret what that City code means, and if that's
492 wrong, then I think you should suggest to City Council that they amend the code and prevent
493 these problems.
494

495 L. Wessinger – (To Petitioner) What about Section 8:5035 - states that all dwelling units "must
496 have a kitchen," but also provides that "except in efficiencies. Food shall not be prepared or
497 cooked in any room used for sleeping purposes." To me, that gives a lot of clarification.
498 (Petitioner – Well, perhaps it does – there's some 'circular logic' in it. That code says that you
499 cannot prepare meals in a sleeping room. We can ask the inspector if there was cooking in that
500 room. Was there any evidence of it? Just because you can cook there, doesn't mean you do.
501 We're getting violations from the City where they look down in the basement and see a futon.
502 "Well – if it's in the basement and you can sleep on it, then they must be sleeping on it, there's
503 circular logic – so, that's a violation. (which I don't agree with). If the kids choose not to cook in
504 the kitchen, since in this case they have two kitchens, that doesn't violate it. The violation comes
505 when they prepare food.")
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508 L. Wessinger – When you get down to the level of ‘maybe they’re not actually cooking food
509 because they choose not to?’ That’s kind of like a separate realm of discussion. We’re saying
510 that we have to provide a kitchen to the unit, that’s in the code. The kitchen has to be outfitted
511 with a range, and I think we’ve all come to an agreement on that, that a microwave is not going to
512 satisfy the requirements of the city. I’m in agreement with city staff on that.
513

514 By saying that ‘this isn’t really a kitchen because they’re not cooking in it,’ that’s circular logic
515 right there, because it has to be a kitchen. It has to be a kitchen because a unit has to have a
516 kitchen. This unit, which is the six bedroom unit, would then be without a kitchen, would it not?
517 (Petitioner – No. This is one of the problems I’ve had with staff on this, is the term ‘use.’ If you
518 sleep in a kitchen, then your unit no longer has a kitchen. ‘Use’ is defined by planning, not by
519 Housing Code. If the city has approved this structure as a six bedroom house that has a living
520 room, a kitchen and a bedroom, the temporary use by the tenant under 8:503, allows them to
521 temporarily use it a different way – but the ‘use’ has not changed for that. The kitchen satisfies
522 city code, but a temporary use – I almost agree with you – I don’t think kids should sleep in
523 kitchens, but we’re talking about temporary uses and I think it’s important to note the difference
524 on those.)
525

526 L. Wessinger – We can’t necessarily base our interpretations on some possible use by individuals
527 that are passing through and constantly turning over in this building. We have to make
528 assumptions that this is going to have a kitchen, the kitchen is most likely going to be used to
529 cook in – that’s the purpose of a kitchen. You can’t say or guarantee that no one in a six
530 bedroom apartment is going to cook in that kitchen during the course of their lease – so, I’m going
531 with the assumption that it’s a kitchen and it’s going to be cooked in. (Petitioner – That’s fine. Of
532 all the applications of 8:503, that’s probably the weakest one that a person could argue against
533 on it. In this situation, we’re really talking about a kitchen/living room as one big room, and the
534 person was sleeping in the area that was the living room.)
535

536 L. Wessinger – I have to agree with city staff on their interpretation of the code. I think it is
537 unfortunate in the case of this particular structure because of the design of the building. The way
538 it was originally to be used, you are precluded from doing that because of Zoning law. That was
539 intended to be a single-family house, to be using it the way the kids are using it right now – using
540 the first floor as their common area with the common kitchen and the dining room instead of using
541 the dining room as a bedroom, which is what they have to do to achieve the division of the units
542 that you’ve come up with. I really see the logic of using it as a single-family house, but I know
543 you can’t do that under the zoning in that neighborhood. Have you ever gone to the Zoning
544 Board of Appeals with this question? (Petitioner – What question would I go to them with?)
545

546 L. Wessinger – You’re limited to no more than six persons in a single family house (Petitioner – In
547 a ‘unit’). They are using this house as a single family house – this is why they are able to
548 abandon one kitchen in favor of the other. This is essentially a 9 person, single-family house. It’s
549 a violation of zoning to use it that way. (Petitioner – Ok, ... really?)
550

551 R. Suarez – Which is why we thought you needed to specify that as a kitchen. (Petitioner – Let
552 me understand you. City Planning has said “this is a two-family home.” If the kids go in and rent
553 the entire house, you’re saying that that now changes city planning use, and if that changes city
554 planning use, then I can never use that as a two family again, because I’m currently
555 grandfathered. I couldn’t use that as a two-family if it wasn’t for the fact that it’s been doing it all
556 this time. Is that what you’re saying here?)
557
558

559 A. Stuart - Do you have two leases? You should have two leases right now. (Petitioner –
560 Why? Why can't the lease say 'both units' or why does it have to?)

561
562 R. Suarez – I think that's a separate question.

563
564 Petitioner – I think we should divorce the house itself from the discussion.

565
566 L. Wessinger – No, because the house has a lot to do with it, because the tenants are able to
567 'abandon' one kitchen for the other kitchen, and that's what they're doing. It's not that no one is
568 cooking in this house, but that they're cooking in one kitchen. (Petitioner – Let me concede that
569 they should not 'sleep' in a kitchen. Now let's talk about the living room or any other area, which
570 is the rest of this issue. What about two kids that move in together and one sets up a bed in a
571 bedroom and the other in a living room?)

572
573 L. Wessinger – One room will be an approved bedroom, and one will not be approved. I see
574 students doing it all the time, but there are certain requirements for a bedroom and a living space
575 of a certain amount of size to make it a one bedroom apartment. You can't eliminate the living
576 room. (Petitioner – *quoting code – If the lease specifies the number of bedrooms in a unit, the
577 furniture or living style of the residence shall not affect the approval of dwelling for occupancy, as
578 long as no room is occupied for sleeping, unless the room complies with smoke detector and exit
579 requirements.* This to me says they can sleep in a living room if they want to, as long as they
580 don't over occupy, have a smoke detector and a second means of egress – otherwise, just cross
581 this section out, as this is the one that says that they can use it as they want to.)

582
583 L. Wessinger – Have you been cited on that? As long as you have the legal number of occupants
584 in a one bedroom. Have you been cited if a student sets up a bed in a living room? (Petitioner –
585 Yes - 1025 Vaughn. We were cited for sleeping in the living room. Living room/Kitchen
586 combination.) Are you talking about the kitchen we're speaking about? (Petitioner – Well, it's a
587 Living room/kitchen.)

588
589 Petitioner – So, you do not believe that a person in a one bedroom apartment – someone couldn't
590 move into the living room and set up a bed there? That's what you're saying? (A. Stuart – Yes,
591 because now you've lost the living room, it's a bedroom that's not approved.)

592
593 R. Fulton – Do you want to know what staff does? In his situation, say you go into an apartment,
594 and it's one bedroom and there are two tenants. If I see a tenant having a bed or bedroom set up
595 in the living room, I will not make him move his bed. As long as it's not a living room/kitchen
596 combination, because they're not over occupied, they have smoke detectors and they have
597 egress. (A. Stuart – But if you have the combination you don't allow it?) We do not allow it
598 because you're cooking in that room.

599
600 L. Wessinger – Rita and all of the inspectors have some room for judgment on each site, and yes
601 there may be areas that you can point out that are inconsistent in terms of application, but that's
602 because each setting and situation is unique. I do have to agree with staff. We would like it on
603 the record that we, as a Board, agree with staff after this administrative review and legal staff
604 **determination.**

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MOTION

Moved by L. Wessinger, Seconded by M. Goldstein, “that concerning Administrative Appeal Number 2007-H-003, 1025 Vaughn Street, the Housing Board of Appeals agrees with the staff and legal determinations for interpretation on kitchens/living rooms and approved bedrooms .”

**On a Voice Vote – MOTION TO APPROVE - PASSED - *UNANIMOUS* –
(Administrative Appeal Denied)**

Mr. Metty also stated that he has made countless phone calls to the City Attorney’s office in the last two months trying to speak with someone else to speak about this, and the closest we got to it was a notice we received in the mail on Saturday saying that the hearing was on, it was going to be settled, and I’m disappointed that we weren’t given some opportunity and some discussion in this.

- D. **OLD BUSINESS** - None.
- E. **NEW BUSINESS** - None.
- F. **REPORTS & COMMUNICATIONS** - None.
- G. **AUDIENCE PARTICIPATION – GENERAL** - None.

ADJOURNMENT

Moved by C. Christiansen, Seconded by Ann Stuart “that the meeting be adjourned.”

On a Voice Vote – MOTION TO ADJORN PASSED - *UNANIMOUS*

Chair Ron Suarez adjourned the meeting at 4:50 p.m.

**(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –
Housing Board of Appeals)**