



**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
JUNE 5, 2007**

The meeting was called to order at 1:30 p.m. by Lelahni Wessinger

ROLL CALL

Members Present: (4) A. Stuart L. Wessinger, M. Goldstein,
C. Christiansen

Members Absent: (2) R. Suarez, D. Fleece

Staff Present: (3) N. Sylvester, K. Chamberlain, and B. Acquaviva

A. APPROVAL OF AGENDA – Hear Appeal Number 2007-H-004, 1490 South Blvd.,
prior to Appeal Number 2007-H-003 – ADMIN., (as the Administrative Appeal could
be lengthy).

B, APPROVAL OF MINUTES

Minutes of the April 3, 2007 Regular Session –

Moved by C. Christiansen, Seconded by D. Fleece, “**to approve the minutes of
the April 3, 2007 Regular Session as presented.**”

On a Voice Vote – MOTION PASSED – UNANIMOUS

C. APPEALS & ACTION

C-2 2007-H-004 – 1490 South Boulevard

The owner of this property, Joseph Baublis, seeks to obtain a Housing Board of Appeals Variance from the stair riser requirement of the Housing Code in order to allow approved access to the second floor habitable areas. The owner is also seeking to obtain a Housing Board of Appeals Variance from sleeping room size requirement of the Housing Code in order to allow occupancy of the second floor west room as habitable space (bedroom).

Background

This is a newly registered single family home going through the first Certificate of Compliance Certificate process. The home is fully equipped with hardwired, interconnected smoke detectors.

Section 8:504 (4)(b)(3) of the Ann Arbor Housing Code prohibits the use of a required exit stairway with a tread of less than 9” unless approved by the Housing Board of Appeals based on a City inspection report showing that certain standards are met. The current depth of the stair treads is 7 ¼”. This is the only interior stairway between the first and second floors. The only full bathroom is on the second floor. There are also 2 studies on the second floor. Per the petitioner, he has provided an approved emergency escape window in the east study that will certify it as a legal bedroom. He is requesting variances for the west study so that it can be certified as legal bedroom.

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54 Section 8:500(14)(b) of the Ann Arbor Housing Code prohibits the use of a room as a habitable
55 room (bedroom) with less than a 7' minimum horizontal dimension and Section 8:503(1)(b)
56 prohibits the use of a room as a habitable room (bedroom) with less than 70 s.f., unless approved
57 by the Housing Board of Appeals based on a City inspection report showing that certain
58 standards are met. The second floor west study has a sloped ceiling with a floor measurement at
59 the 5' ceiling height of 6'8 1/2" x 10'. This room has an approved emergency escape window. The
60 interior stairway leading to this floor does not meet the Housing Code. (Petitioner is seeking a
61 variance for this stairway.)
62

Standards for Approval:

a. Practical difficulties or unnecessary hardship

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67 Prohibiting the use of the interior stairs would deem the second floor of this unit as not
68 habitable. The only full bathroom is on the second floor so the first floor half bathroom
69 would have to be remodeled to become a full bathroom. It is not feasible to rebuild the
70 stairs to meet the Housing Code with the current given restraints.
71

72 Prohibiting the use of the 2nd floor west study as a bedroom would greatly limit the
73 number of tenants that could occupy this unit. It is not feasible to enlarge this room due
74 to the constraints of the bathroom and hallway.
75

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

76
77
78 The primary purpose of the Ann Arbor Housing Code is to protect the health, safety and
79 welfare of residents. By complying with the smoke detector and emergency escape
80 window requirements, this will be achieved.
81

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

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84 Public health and safety will not be jeopardized because the variance is contingent
85 upon the smoke detector and egress being met.
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Recommendation:

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89 Staff recommends the following motions:
90

91 Motion to approve a variance from the stair tread requirements of section 8:504 to allow the
92 interior stairs between the first and second floors with the following contingencies:
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- 94 1. Maintain the current hardwired interconnected smoke detector system.
- 95 2. Maintain stair covering on treads to give maximum width.
96

97 Motion to approve variances from the room width and square footage requirements of sections
98 8:500 and 8:503 to allow the second floor west study to be considered a habitable area
99 (bedroom) with the following contingencies:
100

- 101 1. Maintain the current hardwired interconnected smoke detector system.
- 102 2. Maintain an operable emergency escape window.
- 103 3. Limit occupancy of this room to one occupant.
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105 Petitioner Presentation

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107 Mr. Joseph Baublis was present to speak on behalf of the appeal.

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109 Questions of Staff by the Board

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111 L. Wessinger – Asked about the ceiling heights. As long as he has the interconnected smoke
112 detectors, he doesn't have to worry about the ceiling height? (R. Fulton – No. We measured this,
113 and the stairway has to be at least 27 inches wide. When we measured, with the sloped ceiling
114 coming in, you take half of that 27 (13 ½ inches) and you measure from the nosing of the tread up
115 to that point. He is at 5' 10" and the Housing Code allows you to have a lower headroom as long
116 as it doesn't exceed over 3 steps in that stair run and the hard-wired, interconnected smoke
117 detectors, which he does.

118
119 MOTION

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121 Moved by M. Goldstein, Seconded by A. Stuart "that a variance be granted for Appeal
122 Number 2007-H-003, 1490 South Boulevard, from the stair tread requirements of Section
123 504 to allow the interior stairs between the first and second floors with the following
124 contingencies:

- 125
126 1. Maintain the current hard-wired, interconnected smoke detector system.
127 2. Maintain stair covering on treads to give maximum depth.

128
129 In addition, grant a variance from the room width (7 ft.) and square footage requirements
130 of Sections 8:500 and 8:503, to allow the second floor (west) study to be considered a
131 habitable area (bedroom), with the following contingencies:

- 132
133 1. Maintain the current hard-wired, interconnected smoke detector system.
134 2. Maintain an operable emergency escape window.
135 3. Limit occupancy of this room to one occupant."

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

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140 C-1 2007-H-003-ADMIN. – 1025 Vaughn Street

141
142 Quail Hollow, L.L.C., seeks to obtain a Housing Board of Appeals **Administrative Review**
143 regarding the use of other rooms (living room, living room/kitchen, kitchen and/or other
144 areas not specifically excluded in 8:505) to be used for sleeping purposes. The owner also
145 requests an Administrative Review on the definition of "range or similar device designed
146 for cooking food" as required for kitchens with the basic question of whether a microwave
147 meets the criteria of a "similar device".

148
149 Background

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151 Prior to the December 7, 2006, this building was inspected as a 3 unit building. Since the
152 previous certificate of compliance, the building was converted under permits into two units. A 3-
153 bedroom unit is on the first floor and the other is a 6-bedroom unit, which comprises the 2nd and
154 3rd floors.
155

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156 Section 8:503(1e) of the Ann Arbor Housing Code does allow tenants to use areas other than
157 bedrooms for sleeping as long as the written lease specifies the number of bedrooms in the unit
158 and the room complies with the smoke detector and exit requirements of the Ann Arbor Housing
159 Code. Section 8:503(5) of the Ann Arbor Housing Code states that every unit must have a
160 kitchen and except in efficiencies, food shall not be prepared or cooked in any room used for
161 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:

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

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

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

208
209 **403.3 Cooking facilities.** *Unless approved through the certificate of occupancy, cooking shall not*
210 *be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be*
211 *permitted to be present in the unit or dormitory units.*

212 **Exceptions:**

- 213 1. *Where specifically approved in writing by the code official.*
214 2. *Devices such as coffee pots and microwave ovens shall not be considered cooking*
215 *appliances.*
216

217 **Staff Description and Discussion:**

218
219 (R. Fulton) – We have two issues –

- 220 1. If a kitchen can be used for sleeping and
221 2. Microwaves versus stoves (as an ‘official’ cooking device).
222

223 I inspected this home in December of 2006. Since the last inspection certificate cycle (2 years
224 ago), the owner had the property changed (under permit) from a three family to a two family.
225 There is a three bedroom unit on the first floor (apt. #1) and a bi-level (apt. #2), consisting of the
226 second and third floors. The second floor has five bedrooms and two bathrooms; the third floor
227 has one bedroom and we’ll call it a kitchen/living room/dining room only as this is what the
228 approved building plans say.
229

230 When I conducted the inspection, the kitchen/living room was being used as a bedroom. The
231 only thing in that room that would make it appear as a kitchen would be a double sink and a 220
232 electrical line for a stove. There was no stove, refrigerator, etc. When we certify two units, we
233 have to have two ‘complete’ units – meaning, bedrooms counted, bathrooms, full kitchen. Our
234 code is specific saying that you cannot sleep where food is prepared (8:503 c – “Every unit must
235 have a kitchen, except in efficiencies, food cannot be cooked in any room used for sleeping
236 purposes.”) This is why the room was ordered vacated and ordered to have a refrigerator and a
237 stove installed.
238

239 This sparked conversation regarding the microwave, as the microwave was the first addition to
240 the room. At a later time, a stove was brought in, then a small refrigerator and the tenant moved
241 out into another room. The girl that lived there moved into the front room on that floor. If we
242 recertify this, it has to be a complete unit. The current living arrangements in this group appears
243 to be that they all know each other, so they traverse throughout the building and use the first floor
244 kitchen. Our job is not to decide how they’re living, but we have to assume when we do
245 inspections is that tenants don’t know each other, so all safety issues (doors, locks, etc.) and
246 facilities required have to be addressed.
247

248 It is our position that this unit needs a fully functioning kitchen, including adding impervious floor
249 covering and provide counter tops for food preparation and proper storage for food and utensils
250 as required by the Code.
251

252 K. Chamberlain (Safety Services) – No code violation issues concerning the Fire Department.
253

254 **Petitioner Presentation**

255 Mr. Alloys Metty, resident agent for the owners Quail Hollow L.L.C., was present to speak on
256 behalf of the appeal. He stated that this was a three unit building and turned into what it is now.
257 (Zoned R4C).

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“I would like to get to what the real question is. This house was converted; I think it had more than the nine people in it before when we switched it to a two-family. We did this under permit and it passed the inspections, but the only thing is that the building inspectors don’t have anyone from Housing to do the review, and Housing has its own specific things. Everything that was cited in the letter is particular with Housing and not to Building (the impervious floor covering, the kitchen approved the way it was – although Rita’s notes say that we would move stuff – we didn’t – that’s the way that building approved it. Housing requires additional counter space, cabinets and drawers.”

There is no issue with ‘me’ as far as what I have to put into the kitchen; these are new Housing requirements that are in place. The issue of whether or not I want to have a kitchen or what I’m going to have in the kitchen---- that isn’t the issue. The real question is; “Do I really want someone sleeping in the kitchen, because our lease says they cannot do so; but that is between the tenant and ourselves and should not involve the city.

Over the last few years, I’ve been getting cited for having people living in living rooms or combination living room/kitchens (which is what this one is), for living in kitchens, etc., and I’ve always gone to the Code to determine if this is correct or not. Section 8:501 E was developed to allow occupants to use this the way they need it to. The code goes on in Section 8:505 to prohibit three or four rooms from doing that (bathrooms, closets, attic, etc.). Those are specifically prohibited. I am continually getting cited for kids found sleeping in a living room or a living room/kitchen. You can’t have a double standard, and say it’s ok for microwaves to be in efficiency, but not ok there. It’s certainly not a health and safety issue. I think that the Code allows the kids to sleep wherever they want to as long as it the room has the proper size and it’s not in a basement, bathroom, closet or attic.”

Mr. Metty asked the HBA to look at that code and make an interpretation.

R. Fulton – In Section 8:5035, it states; “Every unit must have a kitchen, and – Except in Efficiencies, food shall not be prepared or cooked in any room used for sleeping purposes. Efficiencies were probably put in there because those have to be a much bigger than a regular bedroom or a kitchen; an efficiency requires at least 150 sq. ft. per person (and/or shall require a separate kitchen).

Questions of Staff by the Board

L. Wessinger – (To R. Fulton) – Do you know how many people are legal for both the three bedroom and the five bedroom. (He could have 12 people total in the building because apartment 2 is six bedrooms and apartment 1 is three bedrooms, with each of those rooms big enough to have 2 people in each room. The building total is not over-occupied (approx. nine current tenants)). It appears that there is one person per room. One of the bedrooms on the first floor is being used as a dining room. The person that could be in that legal bedroom as per plans is using the third floor kitchen as a bedroom.)

L. Wessinger – If the petitioner set up a more fully-functional kitchen at one end of that room, and a student still ‘slipped in’ there and set up his bed at the other end, what would the city say about that? (R. Fulton – We would make them vacate it, as this is designated as the kitchen/living room – it’s not an efficiency).

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308 A. Metty – The inspectors’ analogy is that if you have a living room and you have a person
309 sleeping in it, that room is no longer a ‘living room,’ it’s a bedroom and now that you don’t have a
310 living room any more, you’re violating the definition of the term ‘dwelling.’ It’s ‘circular logic,’ as
311 we’re mixing up the use that Planning has given it versus the way the kids are occupying it.
312 There is a difference. Just because someone sleeps in the living room, this doesn’t change
313 Planning’s view that this is the living room.

314
315 L. Wessinger – I fully understand your point on that, and it is true that students do move around
316 within the units once they’ve taken possession, and they will set them up the way they’re going to
317 be most comfortable as a group. I can also see these doors opened to create a ‘single family’
318 style residence between those two units, as people know each other as friends, etc. My thought
319 was that the city was having problems that the kitchen was not a ‘fully functional’ kitchen, more
320 than the fact that a student put a bed at one end of that room. I personally don’t have a problem
321 with that. I would not elect that as the most appropriate way to arrange the apartment, but if
322 they’d rather have the bed up there so that they can have the table and a dining area on the first
323 floor and create a more appropriate common space, I can follow the logic of it being set up that
324 way. I haven’t heard yet why this impacts on the health and welfare and safety that we’re trying
325 to address through the code.

326
327 R. Fulton – If my mission as a Housing Inspector is to go out and at this particular time – approve
328 a unit, I need a full unit (a full kitchen). The Code tells me, except in efficiencies that if someone
329 is using a kitchen as a bedroom, I cannot sign off on that.

330
331 A. Metty – (Disagrees). I think you need to be specific. They cannot prepare food in there, and if
332 we’re going to be technical about it, that person never prepared food in there. I know it’s far
333 fetched, but....

334
335 R. Fullton – But they did prepare food in there. (A. Metty – The code says you can’t prepare food
336 in there, and doesn’t say you can’t sleep in there).

337
338 L. Wessinger – Is there a legal opinion on this from our advisors from the city? I’m a little
339 uncomfortable with having to come up with a definitive legal position on the Board here as I think
340 this is better in their hands.

341
342 R. Fulton – This is not an isolated incident. The more popular thing is to get a whole group in
343 who know each other, and we come in and this is supposed to be three units, and we find two
344 kitchens – the third one has been dismantled.

345
346 Board – If he put a full kitchen in there, he would be in compliance – (Yes).

347
348 *(The Board and Staff discussed the amount of rooms and the usage of the building at length).*

349
350 A. Metty – Stated that he is not the type to play games and pull mattresses in and out of rooms,
351 etc., but stated that either we need to make the rules so you can’t live in the kitchen, or quit giving
352 everyone such a hard time about it – lets get it straight, and that is what this is all about. If you
353 look at my petition, I’m not saying you don’t have to have a kitchen, this is the difference between
354 building and housing – every citation I had was on a housing code. The issue is not ‘will I finish
355 the kitchen,’ the issue is the interpretation. There is no code section that says that I can’t have a
356 door or a lock on a kitchen. I need these finite rules. I’m getting violations that aren’t violations
357 any more.

358

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359 C. Christiansen – If I was a landlord and had someone sleeping in a kitchen, it would occur to me
360 that they'll want privacy – then they're probably going to hang up curtains because they don't
361 have walls, which then could become a fire hazard. Truthfully, if it had a futon instead of a bed,
362 and the fire escape is right there, it wouldn't be a point of contention.

363

364 *(The Board and petitioner discussed the microwave vs. stove debate).*

365

366 A. Metty – Stated that he wanted the microwave to be considered a cooking device as he was not
367 eager to put a stove on the third floor, as he had that type of incident happen to another of his
368 properties where the student let a pot boil dry and it caused a fire. You can have a microwave, a
369 coffee pot and a refrigerator in your room if you want to, because those aren't 'cooking devices;'
370 The reason you couldn't cook in a room is that during the 1970's, the trend was hot plates, and
371 those caused numerous fires. This is the rationale behind no cooking in the sleeping area.
372 Microwaves are much different that they were during those times. I don't particularly have a
373 problem with installing a stove, although I think that a microwave would be acceptable.

374

375 L. Wessinger – Stated that she agreed with R. Fulton about putting in a full kitchen. This is
376 required due to the zoning requirements. The issue of the bed should be taken up by the legal
377 department here. *(Administrative Support suggested that the Board pass a motion to table until*
378 *guidance on the issue can be obtained).*

379

MOTION

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381
382 Moved by C. Christiansen, Seconded by M. Goldstein, **“that Administrative Appeal Number**
383 **2007-H-003, 1025 Vaughn Street, be tabled to the July 2007 Regular Session and/or the**
384 **next Regular Session of the Housing Board of Appeals after conferring with city legal**
385 **staff.”**

386

387 **On a Voice Vote – MOTION TO TABLE PASSED - UNANIMOUS – *Administrative Appeal***
388 ***Tabled***

389

390 **D. OLD BUSINESS - None.**

391

392 **E. NEW BUSINESS - None.**

393

394 **F. REPORTS & COMMUNICATIONS - None.**

395

396 **G. AUDIENCE PARTICIPATION – GENERAL - None.**

397

ADJOURNMENT

398

400 Moved by L. Wessinger, Seconded by C. Christiansen **“that the meeting be adjourned.”**

401

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

403 Acting Chair Lelahni Wessinger adjourned the meeting at 3:45 p.m.

404

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