

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

ALI JOHROMI AND KRISTIE : In Re: 500 Cato Street, Apartment, A  
JOHROMI, : Pittsburgh, PA 15213  
: :  
Appellants, : Docket No. ACHD-18-017  
: :  
v. : Copies Sent To:  
: *Appellants:*  
ALLEGHENY COUNTY HEALTH : Ali and Kristie Johromi  
DEPARTMENT, : 105 Atterbury Street  
: Monroeville, PA 15146  
Appellee. : :  
: *Counsel for ACHD:*  
: Vijya Patel, Esq.  
: 301 39<sup>th</sup> Street, Building 7  
: Pittsburgh, PA 15201

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH  
DEPARTMENT HEARING OFFICER**

**I. INTRODUCTION**

The issue in this case is whether the Allegheny County Health Department (“ACHD”) properly denied a variance request. Appellants Ali and Kristie Johromi (“Appellants” or the “Johromis”) appeal from an ACHD decision denying their request for a variance for a basement apartment in Pittsburgh’s Oakland neighborhood. Specifically, the ACHD refused to grant the Johromis a variance from the legal minimum ceiling height of 7 feet, as the basement apartment’s ceilings were lower than that. The ACHD also refused to grant the Johromis a variance from the requirement that all habitable rooms must have at least one operable window or device that adequately ventilates the room.

The Johromis assert that the denial of the variance was an abuse of discretion, an unconstitutional government taking, and that the Johromis did not cause the defects found in the basement apartment. The ACHD argues in response that the variance was properly denied because the minimum ceiling height requirement under ACHD regulations promotes key public health objectives, such as ensuring adequate ventilation and preventing persons in the apartment from hitting their heads on low ceilings and beams.

After reviewing the evidence and testimony from the hearing, as well as applicable regulations, this tribunal finds that the ACHD was within its rights to deny the Johromis' variance request. Therefore, the Johromis' appeal is dismissed.

## **II. EVIDENCE**

The following exhibits were offered by Appellants and admitted into evidence:

- A1: Certificate of Occupancy
- A2: List of Improvements
- A3: Deed to 500 Cato Street
- A4: Invoice to Hall's Pest Control

The following exhibits were offered by the ACHD and admitted into evidence:

- D1: Inspection Report dated May 9, 2017
- D2: Inspection Report dated June 16, 2017
- D3: Variance Denial Letter

## **III. FINDINGS OF FACT**

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

- 1) Ali and Kristie Johromi own the property at 500 Cato Street in Pittsburgh, including the Apartment A (the "Basement Unit"). (Ex. D3).

- 2) On May 9, 2017 and June 16, 2017, the ACHD inspected the Basement Unit, and issued several violations relating to insufficient ceiling height and inadequate ventilation. The ACHD instructed the Johromis to vacate the Basement Unit unless they could make the ceiling height at least seven feet. (Exs. D1, D2; Hearing Transcript (“H.T.”) at 16-17).
- 3) In addition to measuring the ceiling height in the Basement Unit, the ACHD measured two beams in the living room, that measured approximately five feet, nine inches from the floor. (H.T. at 16).
- 4) The Johromis requested a variance from the ACHD regarding ceiling height and adequate ventilation.
- 5) On May 23, 2018, the ACHD denied the Johromis’ variance request, based on health hazards stemming from inadequate ceiling height and inadequate ventilation in several rooms, including the kitchen and bedroom. (Ex. D3).
- 6) On June 6, 2018, the Johromis filed an appeal of the variance request denial.
- 7) On September 19, 2018, an administrative hearing was held to resolve this matter.

#### IV. DISCUSSION

Under ACHD Rules and Regulations, Article XI, Hearings and Appeals (“Article XI”), the Appellant bears the burden of proof when the ACHD denies a license, permit, approval, or certification. Article XI, § 1105.C.7. In order to prevail in their appeal, Appellants must prove by a preponderance of the evidence that the ACHD is required to grant their variance request.

##### **A. The Johromis failed to show why they should have been granted a variance.**

ACHD Rules and Regulations, Article VI—Houses and Community Environment (“Article VI”) § 659 states, “Any interested party may request a variance from the provisions of” Article VI, and that the request must “be in writing, state the reasons for the request, and provide evidence that the variance

poses no real or potential hazard to the health, safety, or welfare of the public or any individual.” This section does not mandate that the ACHD to grant a variance, even if these requirements are met.

At the hearing, the Johromis did not present any evidence that the variance they sought “poses no real or potential hazard” to the public or any individual. The Johromis only provided a Certificate of Occupancy from the City of Pittsburgh from 2006 for 500 Cato Street. (Ex. A1). The City of Pittsburgh and the ACHD have different Certificate of Occupancy requirements. The Johromis also stated that they were unaware of the ACHD’s regulations. (H.T. at 6, 11). As the old legal cliché goes, ignorance of the law is no excuse. The Johromis failed to demonstrate why the ACHD’s denial of their variance request was improper.

**B. The ACHD presented evidence to support its denial of a variance.**

The ACHD denied the Johromis’ variance request based on two sections of Article VI. First, § 643.A, which declares that basement units may not be occupied as dwelling units or habitable rooms unless, among other things, the ceiling height is at least 7 feet, and any room intended to be used for sleeping purposes must have at least one window that meets the requirements outlined in this section or a door leading directly to the outside and exiting at grade level. Second, basement units must comply § 648, which requires that every habitable room must have at least one openable window or a device that adequately ventilates the room.

At the hearing, the ACHD presented convincing testimony justifying its actions under Article VI, §§ 643.A and 648. David Namey, the ACHD’s Housing and

Community Environment Program Manager, testified about numerous health and safety concerns that the ACHD evaluated regarding the Basement Unit. (H.T. at 19). These concerns included how low ceilings and beams can cause residents and visitors to hit their heads. Additionally, Mr. Namey testified about how reduced ventilation and air flow can inhibit ventilation and cause an unhealthy accumulation of carbon dioxide. (H.T. at 21). Mr. Namey's testimony, coupled with the inspection reports and variance denial letter, indicate that the ACHD's denial of the Johromis' variance request was reasonable.

**V. CONCLUSION**

Based on the evidence and testimony presented at the hearing, as well as the relevant Rules and Regulations, this tribunal finds that that the ACHD was within its rights to deny the Johromis' variance, and that the Johromis' appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.



Max Slater  
Administrative Hearing Officer  
Allegheny County Health Department

December 10, 2018

Dated: