

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:  
JENNA ROSS SMITH**

Petitioner

Jenna Ross Smith  
Alan Minor

For the Petition

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Robert Goff, Housing Inspector

Department of Housing and  
Community Affairs

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Board of Appeals Case No. S-2773  
(OZAH Case No. 10-12)

Before: Lynn A. Robeson, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

Petition No. S-2773, filed on May 14, 2010, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the basement of an existing single-family home located at 6430 Ridge Road, Bethesda, Maryland. The property's legal description is Lots 1, 2 and 3, Block 7, Brookmont Subdivision. It is zoned R-60 and has the Tax Account No. 00448308.

The hearing was scheduled for October 7, 2010, by notice dated May 26, 2010 (Exhibit 11(b)). The hearing was rescheduled to November 8, 2010, by notice dated September 27, 2010. Technical Staff at the Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a report issued November 1, 2010, recommended approval of the special exception, with conditions. Exhibit 14.<sup>1</sup>

The Department of Housing and Community Affairs (DHCA) inspected the property on October 22, 2010. Housing Code Inspector Robert Goff reported his findings in a memorandum dated October 25, 2010 (Exhibit 12).

A public hearing was convened on November 8, 2010, as rescheduled. The Petitioner and Mr. Alan Miner, an architect, testified in support of the petition. Inspector Robert Goff of the DHCA testified on behalf of that agency. Petitioner executed an affidavit of posting, Exhibit 15, and supplied records from the Maryland Department of Assessments and Taxation listing Petitioner as owner of the property (Exhibit 16). They adopted the findings in the Technical Staff Report (Exhibit 14) as Petitioner's own evidence T. 7. They also agreed to meet two of the conditions set forth in the Housing Inspector's memorandum but did not agree to items 1 and 2 regarding the need to increase the height of the apartment's ceiling to conform with Code of Montgomery County Regulations (COMCOR), Regulation 26.00.02. T. 7-8. The record was closed at the end of the hearing.

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<sup>1</sup> The Technical Staff report is frequently quoted and paraphrased herein.

On November 10, 2010, the Hearing Examiner reopened the record in order to permit the parties to address whether a waiver provision existed which would permit ceiling heights lower than those set forth in COMCOR. After a series of communications between the Petitioner, the Deputy Fire Marshal, and representatives of DHCA, the record was again closed on December 10, 2010. Exhibits 18-21.

There is no opposition to this special exception, and, with the exception of the ceiling height, the petition meets all of the statutory criteria. The Deputy Fire Marshal has indicated that modifications may be made to the apartment to address safety concerns stemming from the lower ceiling height. DHCA has agreed to accept these modifications in lieu of raising the ceiling of the apartment. Because of this, the Hearing Examiner recommends approval of this petition.

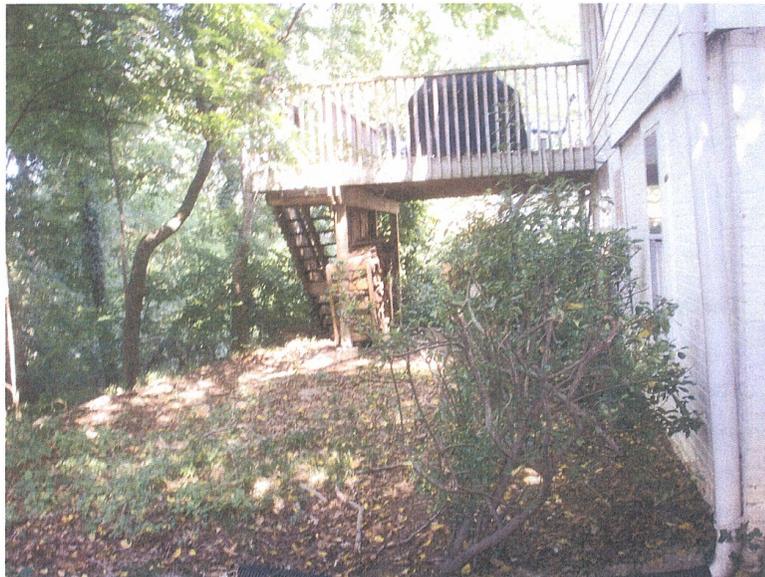
## **II. FACTUAL BACKGROUND**

### **A. The Subject Property and the Surrounding Area**

The subject property lies within a single-family residential neighborhood zoned R-60 just east of the Clara Barton Parkway. Comprised of three lots, the total area of the property is 7,200 square feet. Built in 1928, the single-family home contains 1,448 square feet. Technical Staff reports that the existing landscaping is relatively well maintained and the backyard consists primarily of woods that separate the home from the Parkway. Exhibit 14, p. 2. A shared driveway divides the property from the adjacent home to the north. Exhibit 14, p. 2. Different views of the single-family dwelling, reproduced in the Technical Staff Report (Exhibit 14) are set forth on the next two pages.



**VIEW FROM RIDGE ROAD  
EX. 41, P. 3**



**VIEW OF REAR YARD  
EX. 41, P. 3**



**VIEW OF SHARED DRIVEWAY  
EXHIBIT 41, P. 4**

Technical Staff has defined the surrounding neighborhood by Virginia Place to the north, Broad Street to the east, 64<sup>th</sup> Street to the south, and Clara Barton Parkway and the Potomac River to the west. Exhibit 14, p. 4. Staff reasoned that the entire neighborhood is zoned R-60 and comprised of single-family detached homes. Exhibit 14, pp. 4-5. An aerial photo depicting the neighborhood defined by Technical Staff is set forth on the next page.



**Neighborhood Boundary,  
Exhibit 41, p. 5**

**B. The Proposed Use**

The Petitioner seeks to allow an accessory apartment in the basement of their existing home. The apartment proposed consists of 504 square feet. DHCA advises that of that amount, 344.6 square feet is habitable space. Exhibit 13. A separate entrance to the proposed accessory apartment is located in the rear of the residence, on the lower level, as shown on the next page. Technical Staff concluded that the entrance has the appearance of a typical side entry into a single-family home and should not detract from the residential appearance of the neighborhood. Exhibit 14, p. 6. Staff also advises that the lighting above and to the side of the doorway is residential in character. Exhibit 14, p. 6. Photographs of the entrance and lighting, taken by the Petitioner, are set forth on the next page.

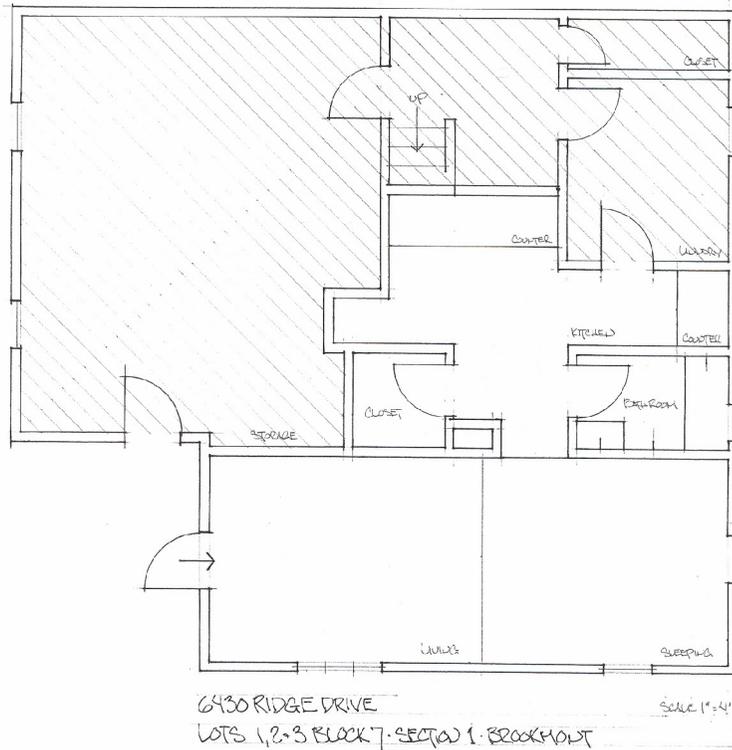


**REAR ENTRANCE  
EXHIBIT 14, P. 6**



**APARTMENT ACCESS FROM  
DRIVEWAY, EX. 9(C)**

The entrance to the apartment leads directly to a living area and connected bedroom. Exhibit 6. Remaining habitable areas include a kitchen, bathroom, and bedroom. The floor plan for the apartment (Exhibit 6) is set forth below:



**FLOOR PLAN. EXHIBIT 6**

Based on the habitable area of the apartment, Mr. Goff concluded that it may be occupied by no more than 2 unrelated persons. Exhibit 13. He also concluded that the shared driveway may hold up to 3 cars, adequate to accommodate the use, as did Technical Staff. Exhibit 14, p. 2.

In his report (Exhibit 13), Mr. Goff advised that there are three corrections that needed to be made to the accessory apartment in order to comply with County Code standards. These are:

1. Ceiling in the hall and kitchen must be no lower than 84'. (current ceiling height is 78") [sic]

2. The bulkhead in the living room must be no lower than 78".(current bulkhead is 74'[sic]
3. Install range in the kitchen.

Petitioner testified that she would install the range in the kitchen. T.8. Petitioner did not accept, however, the statements set forth in items 1 and 2 relating to the ceiling heights of the various rooms. The height of the ceiling in the living area is shown below in a picture taken by the applicant (Exhibit 9(d)):



**LIVING AREA, EXHIBIT 9(D)**

There are two bulkheads between the living area and the bedroom that, according to the architect who testified on behalf of the Petitioner, reduce the ceiling height from 6'11½" to 6'7.6" for one bulkhead and to 6'3" for the second bulkhead. T. 18-20. According to the Housing Inspector, the ceiling height in the kitchen and hall is 78", or 6" less than required by COMCOR. Exhibit 13. Pictures of the living/bedroom areas and the kitchen showing the bulkheads and ceilings are set forth on the next page.



**VIEW OF LIVING AND BEDROOM AREAS  
EXHIBIT 9(D)**



**VIEW OF KITCHEN, EXHIBIT 9(E)**

### **C. Neighborhood Response**

As mentioned at the beginning of this report, there has been no response from the community, either positive or negative to the subject petition. There is no opposition in the case.

### **D. The Master Plan**

The property is located within the area covered by the *1990 Bethesda Chevy Chase Master Plan*. Exhibit 14, p. 6. The Plan does not explicitly address the subject property, but does provide general guidance supporting expansion of housing choices within the area, such as accessory apartments. Exhibit 14, Attachment 1.

Because Petitioner plans no major external modifications to the subject property, Technical Staff concluded, and the Hearing Examiner agrees, that the special exception is consistent with the Bethesda Chevy Chase Master Plan's objective of expanding housing choices in the area.

## **III. SUMMARY OF HEARING**

Two witnesses testified in support of the petition, the Petitioner, Mrs. Jenna Ross Smith, and an architect, Mr. Alan Riner. Mr. Robert Goff testified on behalf of DHCA.

Mrs. Jenna Ross Smith: Petitioner executed an affidavit of posting (Exhibit 15), and supplied a copy of the records of the State Department of Assessments and Taxation as proof of ownership of the property (Exhibit 16). Through her attorney, she adopted the findings in the Technical Staff Report (Exhibit 14) as Petitioner's own evidence. T. 9. She also agreed to abide by the conditions set forth in the Technical Staff Report. T. 16. Mrs. Smith also stated that she would comply with items 3 and 4 in the Housing Inspector's memorandum, but did not agree to Items 1 and 2, relating to the ceiling heights. T. 10.

Mrs. Smith testified that the apartment had existed when she purchased the home in 2004. At the time of purchase, the home was represented to her as a "two-family" home and she

purchased the house in reliance on having the rental income to assist with her mortgage payment.

T. 12. Mrs. Smith identified the pictures that had been submitted into the record, the floor plan, and the landscape and lighting plan (Exhibits 5, 6, and 9). She stated that the photographs fairly and accurately depicted the dwelling at the time they were taken. Finally, she testified that she was requesting a waiver of the ceiling height requirements if one was available. T. 29.

Mr. Alan Miner: Mr. Alan Miner, an architect, testified that the ceiling height in the living and bedroom areas is 6 feet, 11.5 inches. T. 19. Two bulkheads in the ceiling traverse the width of the sitting area, somewhat dividing the sitting area from the bedroom. T. 20. One bulkhead lowers the ceiling height to 6' 7.5". T. 20. The second bulkhead lowers the ceiling height to 6'3". T. 20. Mr. Miner testified that the existence of the bulkheads does not change the hazard rating for the home under the International Building Code (IBC). T. 21. The hazard rating for single-family homes is level 4, which is the least hazardous rating. T. 21. He felt that one could assume the single-family dwelling complied with all building codes when constructed. T. 23. Because the hazard rating under the IBC remains unchanged regardless of the height of the ceiling, he concluded that the building was safe. Mr. Miner testified that he believed one of the bulkheads was a structural beam and one was a mechanical duct.

Mr. Robert Goff: Housing Code Inspector Robert Goff testified that his report accurately represented his findings upon inspection of the premises. T. 26. He stated that he was not familiar with any provisions of the COMCOR regulations pertaining to accessory apartments that would permit a waiver of the ceiling height. T. 26. He stated that DHCA looked at the height of the ceilings because the safety of fire safety personnel compromised by the lower ceilings when entering the apartment. In smoky conditions and when wearing equipment, fire personnel could hit their heads on the bulkhead and, colloquially, "knock themselves out". T. 28.

#### **IV. POST-HEARING EVIDENCE**

After the close of the public hearing, the Hearing Examiner reopened the record to invite the parties to comment on whether a waiver of the ceiling height limits contained in COMCOR could be obtained. Exhibit 17. A letter from Deputy Fire Marshal Michael A. Donahue was submitted into the record. Mr. Donahue stated that certain modifications would remove any objections to permitting the accessory apartment under the fire code. Exhibit 19. Specifically, Mr. Donahue stated that installation of interconnected smoke detectors, an egress window in the sleeping area, and a side swing door between the kitchen and sleeping area would address fire code issues. Exhibit 19. The Hearing Examiner then inquired whether the improvements outlined by the fire department were acceptable to DHCA. On December 6, 2010, DHCA replied stating that the proposed modifications would be acceptable to that department. Exhibit 20(b).

#### **V. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner would have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 14). DHCA found that the ceiling heights did not comply with the COMCOR requirements for accessory apartments and the evidence supports this conclusion. However, both the Deputy Fire Marshal and DHCA later concluded that certain

alternative modifications (set forth in a letter from the Deputy Fire Marshal dated December 3, 2010) would be acceptable to both departments for permitting purposes. Exhibits 19, 20(b).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part VI, below.

### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent

effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 13, p. 4):

- (1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall with the main unit;
- (2) the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code;
- (3) a separate entrance and walkway and sufficient exterior lighting;
- (4) sufficient parking;
- (5) the existence of an additional household on the site; and
- (6) additional activity from that household, including potential for additional noise from that additional household.

Exhibit 14, p. 10. The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found “there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment.” Exhibit 14, p. 10. Based on the evidence presented by DHCA, however, the Hearing Examiner finds that there is one non-inherent site characteristic, the ceiling heights in the basement apartment do not meet the requirements for accessory apartments contained in COMCOR. The low ceiling heights constitute an operational characteristic atypical of accessory apartments and which potentially may have an adverse impact on the general public. However, as discussed in Part IV of this report, modifications may be made to the structure to mitigate this adverse impact. Thus, while

this issue warrants a condition requiring the Petitioner to make the improvements required by the Deputy Fire Marshal, the Hearing Examiner finds that this non-inherent characteristic does not justify denying the petition.

In sum, considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes that there are no non-inherent adverse effects from the proposed use warranting denial of this petition.

### **B. General Conditions**

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector's report, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

#### **Sec. 59-G-1.21. General conditions.**

**§5-G-1.21(a)** -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan*

*adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *1990 Bethesda Chevy Chase Master Plan*. Exhibit 14, p. 4. The Plan reaffirms the R-60 zoning for the subject property, which permits accessory apartments, although it does not contain any explicit discussion of the property. Exhibit 8, Exhibit 14, pp. 4-5, Attachment 1. As a general goal, however, the Plan does emphasize providing more housing choices within the area. Exhibit 14, pp. 4-5, Attachment 1. The Technical Staff concluded that the proposed accessory apartment would be consistent with the Plan. Exhibit 14, pp. 6-7. Moreover, because Petitioner plans no major external structural modifications to the subject property, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the master plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require major external changes. Therefore, the accessory apartment will not impact the residential character of the neighborhood. There will be sufficient parking, considering the

driveway space and the availability of on-street parking, and traffic conditions will not be affected adversely, according to Transportation Planning Staff. Exhibit 14, Attachment 2. Only one existing special exception is currently located within the neighborhood. Exhibit 14, p. 12. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood. Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 14), and no evidence contradicts this conclusion.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that “[a]dequate lighting, residential in character, is located above the entrance to the accessory apartment.” Exhibit 14, p. 6. Mrs. Smith testified that the only additional lighting will be a motion sensor light on the exterior of the dwelling. T. 17. Since the use will be indoors and residential, the Hearing Examiner finds that it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of*

*special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As discussed above, only one additional special exception is located within the neighborhood. Technical Staff found that because the use itself is residential in character and will not increase the intensity or scope of the special exception uses, it will not affect the area adversely. The photographs submitted by the Petitioner support this conclusion. Based on this evidence, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. As previously discussed, any adverse impact from the lower ceiling heights in the living and sleeping areas and the kitchen may be alleviated by modifications to which the Petitioner has agreed.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it*

*considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). Transportation Planning Staff did such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 14, Attachment 2. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Because the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: The proposed special exception will add only one additional peak hour trip and utilize an existing driveway. Technical Staff found that, “the proposed development will not reduce the safety of vehicular or pedestrian traffic.” Exhibit 14, p. 14. Based upon this evidence, the Hearing Examiner finds that this standard has been met.

### **C. Specific Standards**

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 14), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

***Sec. 59-G-2.00. Accessory apartment.***

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

***(a) Dwelling unit requirements:***

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

**Conclusion:** Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) The lot is 2 acres or more in size; and*  
*(ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

**Conclusion:** The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

**Conclusion:** No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) The one-family detached dwelling in which the accessory apartment*

*is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The home was built in 1928. Exhibits 14, 16. It therefore meets the “5 year old” requirement.

*(5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use does not violate any of the provisions of this subsection.

*(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through an existing rear entrance to the home, on the lower level. There will thus be no change to the residential appearance of the dwelling.

*(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioner is not proposing any new construction or major modifications to the exterior of the dwelling.

*(8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

*(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment is clearly subordinate to the main dwelling as it occupies approximately 504 square feet of space (344.6 square feet of which is habitable space) in Petitioner’ existing 1,446 square-foot home. Similarly, it is under the maximum permitted area

of 1,200 square feet. Exhibits 13, 14, p. 2.

**59-G § 2.00(b) Ownership Requirements**

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in one part of the dwelling.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to records of the Department of Assessment and Taxation (Exhibit 16), Petitioner purchased the home in 2004. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioner is an owner of the property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

**59-G § 2.00(c) Land Use Requirements**

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully*

*constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject property consists of three recorded lots totaling approximately 7,200 square feet in size, and therefore satisfies this requirement.

The following chart from the Technical Staff Report (Exhibit 14, p. 9) specifies the R-60 development standards and those actually found on the site:

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	2 stories	§ 59-C-1.327
Minimum Lot Area	6,000 sq. ft.	7,200 sq. ft. (3 lots)	§ 59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	60 ft. (3 lots)	§ 59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	60 ft. (3 lots)	§ 59-C-1.322(b)
Minimum Setback from Street for Corner Lot	15 ft.	n/a	§ 59-C-1.323(a)
Minimum Side Yard Setback	8 ft. one side; sum of 18 ft. both sides	8.3 ft north side; 13.3 ft. south side; 21.6 ft. sum of both	§ 59-C-1.323(b)(1)
Minimum Rear Yard Setback	20 ft.	Approx 60 ft.	§ 59-C-1.323(b)(2)
Maximum Building Coverage	35 percent	17 percent (3 lots)	§ 59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	504 sq. ft.	§ 59-G-2.00(a)(9)

(2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As previously stated in this report, the Hearing Examiner concludes that the proposed special exception, combined with the single existing accessory apartment in the neighborhood, will not create an excessive concentration of similar use.

(3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*

- (i) *More spaces are required to supplement on-street parking; or*
- (ii) *Adequate on-street parking permits fewer off-street spaces. Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: As discussed in Part II.B of this report, there are three off-street parking spaces in Petitioner' driveway and on-street parking in the area. Based upon this evidence, the Hearing Examiner finds that this standard may be met.

#### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 13) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than two persons. In addition, the Housing Inspector found that the ceiling heights in the living/sleeping room areas and the kitchen do not meet the minimum height of 6 feet, 8 inches required by COMCOR 26.00.02.07. Subsequently, DHCA found that the modifications proposed by the Deputy Fire Marshal are acceptable. Exhibit 20(b). Given that COMCOR vests in DHCA the "final authority" for interpreting its regulations pertaining to accessory apartments, *see*, COMCOR 26.00.02.01, the Hearing Examiner finds that the these standards have been met.

#### **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2773, which seeks a special exception for an accessory apartment to be located at 6430 Ridge Road, Bethesda, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by their testimony, representations and exhibits of record;
2. The Petitioner must install the stove or range in the kitchen area.

3. Based on habitable space in the apartment (344.6 square feet), no more two persons may reside in the accessory apartment.
4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;
6. Petitioner must complete all modifications set forth in the letter dated December 3, 2010, from Deputy Fire Marshal Michael A. Donohue (Exhibit 19) prior to occupancy.
7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: January 10, 2011

Respectfully submitted,

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Lynn A. Robeson  
Hearing Examiner