

**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: *
SAMANTHA L. TUTTAMORE *

Board of Appeals No. S-2846
(OZAH No. 12-36)

Petitioner *
Samantha L. Tuttamore *
For the Petition *

Ivan Eloisa *
Department of Housing and *
Community Affairs *

Before: Tammy J. CitaraManis, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION
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I. STATEMENT OF THE CASE

In Petition No. S-2846, Petitioner, Samantha L. Tuttamore, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 9323 Cedar Lane, Bethesda, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 6, Block B, in the Parkview Subdivision. The tax account number is 00628636.

On May 11, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for October 11, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated September 17, 2012, recommended approval of the special exception, with seven (7) conditions, one of which was that Petitioner obtain a variance regarding the required front-yard setback. Exhibit 12.¹

A Housing Code Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on September 26, 2012. Housing Code Inspector Ivan Eloisa reported his findings in a memorandum dated September 28, 2012. Exhibit 13. Since the proposed accessory apartment has not been constructed, the habitable space and occupancy limit could not be determined.² DHCA submitted a memorandum dated October 2, 2012, from Ada DeJesus, Licensing and Registration Unit, reporting two accessory apartments and no registered living units (RLU's) in the direct vicinity of Petitioner's property. Exhibit 14.

The hearing went forward as scheduled on October 11, 2012, and Petitioner, Samantha L. Tuttamore, appeared *pro se*. Petitioner executed an Affidavit of Posting (Exhibit 18). Petitioner

¹ The Technical Staff report is frequently quoted and paraphrased herein. As a condition of approval, Technical Staff stated in Condition no. 5: "The applicant must obtain a variance if deemed necessary by the Department of Permitting Services to address the fact that the existing front-yard setback is 0.5 feet less than is required in the R-60 Zone." Exhibit 12, p. 2.

² Mr. Eloisa testified that the habitable space and occupancy limit will be determined at the final inspection. However, he noted that based on the size of the proposed one bedroom (128 square feet) occupancy would be limited to no more than two people. Tr. 38-39.

testified in support of the petition and adopted the findings in the Technical Staff Report (Exhibit 12) and Housing Code Inspector's Report (Exhibit 13), as her own evidence and agreed to meet all the conditions set forth in both reports. Tr. 10-27. Petitioner submitted a copy of her deed (Exhibit 17) and Elevation Plan for the property (Exhibit 16). Housing Code Inspector Ivan Eloisa also testified. No opposition appeared at the hearing.

At the hearing, Petitioner submitted a revised Landscape Plan (Exhibit 6(a)) showing compliance with two conditions of approval (Conditions no. 4 and 6) recommended in the Technical Staff report. Exhibit 12, p. 2. Technical Staff reviewed and approved the revised Landscape Plan on September 25, 2012. Exhibit 6 (a).³

The record was held open until November 1, 2012, to give Petitioner time to file for a variance from the front yard minimum setback from the street (25 feet) required in the R-60 Zone. On October 19, 2012, while the record was open, Petitioner submitted an e-mail (Exhibit 19) advising she had obtained a new boundary survey for her property dated October 17, 2012. The boundary survey revealed that the existing front yard setback is actually 25.01 feet and not 24.5 feet as shown on the location drawing Site Plan (Exhibit 4) she submitted with the Petition.⁴ Petitioner submitted the boundary survey on October 25, 2012 (Exhibit 20), as evidence that her property met the front-yard setback requirements and a variance was not required. The record closed as scheduled.

³ Petitioner testified that she met with Ms. Margaret Rifkin on September 25, 2012, to discuss the conditions noted in the Technical Staff Report and submit a revised Landscape Plan. Tr. 9-14. Petitioner indicated she was advised to wait until the hearing to determine whether she should file for a variance from the front yard setback Tr. 16.

⁴ Petitioner indicated that DPS staff suggested that she obtain a boundary survey of her property because the setback distances shown on a boundary survey are more accurate than the setback distances shown on a location drawing. Exhibit 19. The location drawing of Petitioner's property clearly notes: "Setback distances as shown to the principal property lines are approximate. The level of accuracy should be taken to be no greater than plus or minus 1.5 feet." Exhibit 4.

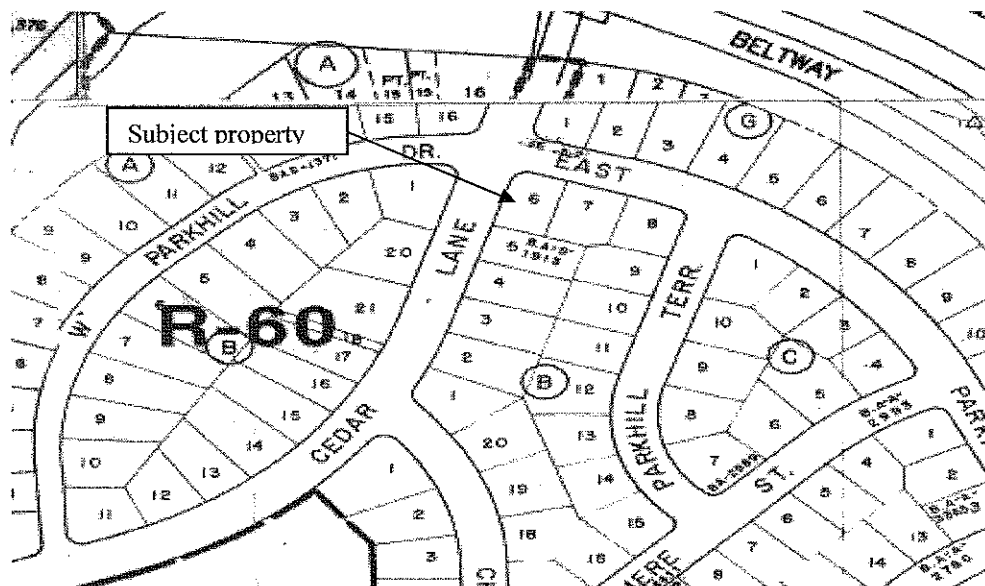
On November 16, 2012, Technical Staff submitted an e-mail confirming that she had reviewed and approved the revised Landscape Plan (Exhibit 6(a)) and new boundary survey (Exhibit 20) and concluded that the “documentation supplied adequately addresses the conditions recommended in the staff report.” Exhibit 21. Since Technical Staff’s supplemental submission to the Technical Staff report was received after the record closed as scheduled, the Hearing Examiner hereby reopens and closes the record effective November 16, 2012, in order to receive Technical Staff’s submission.

For the reasons set forth below, the Hearing Examiner recommends approval of the requested special exception, subject to the conditions set forth in Section V of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property and Its Current Use

The subject property is located at 9323 Cedar Lane, Bethesda, Maryland, in the Parkview Subdivision. It is zoned R-60. The property is a 7,566 square foot corner lot located on the southeast corner of Cedar Lane and East Parkhill Drive as shown below on the Zoning Map of the area (Exhibit 10):



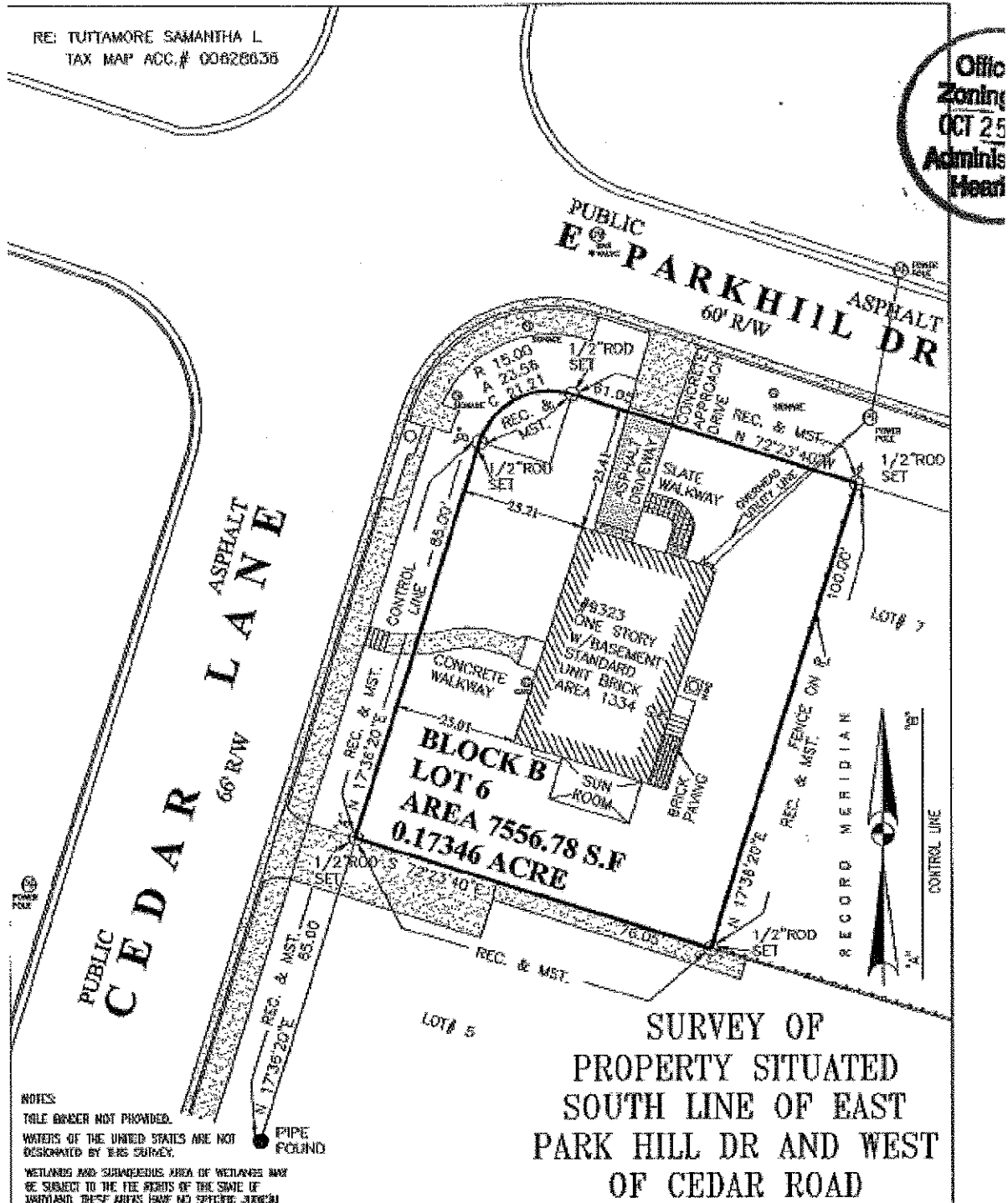
Technical Staff provided an aerial photograph of the property and surrounding neighborhood, shown below (Exhibit 12, p. 5):



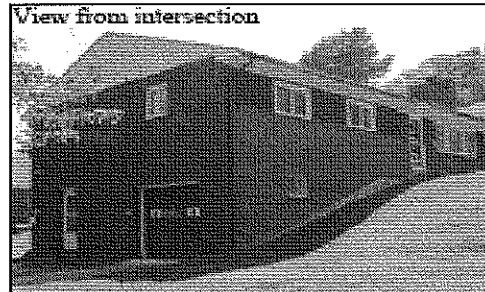
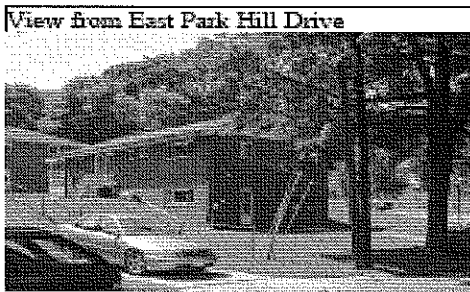
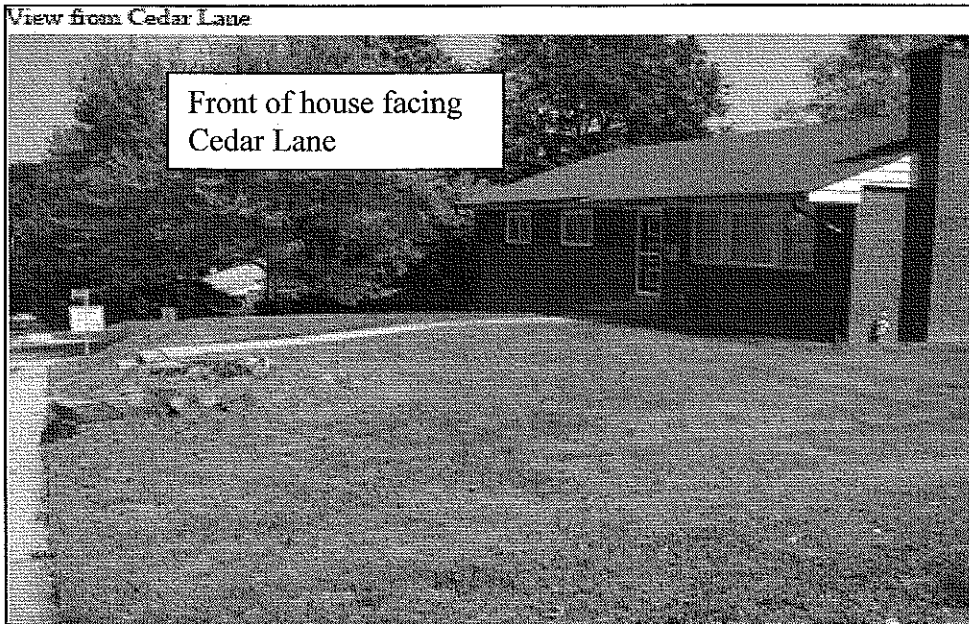
Technical Staff described the property as follows (Exhibit 12, p. 3):

According to State of Maryland tax records, the existing one-story house was constructed in 1952 and has an enclosed area of 1,334 square feet. The house is located on a corner lot on Cedar Lane southeast of the street's intersection with East Parkhill Drive. The lot has an upper and lower level connected by a slope. The backyard is an open area covered with grass. Vehicular access to the lot is from East Parkhill Drive where there is a driveway that has space for two vehicles to park, and that leads to a one car garage. There is on-street parking on East Parkhill Drive.

The Site Plan (e.g., boundary survey) for the property is shown on the next page. Exhibit



Photographs of the front and side of the property, taken from the Technical Staff report (Exhibit 12, p. 4); are shown on the next page.



Accessory apartment entrance on side of house facing Parkhill Drive

B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood, which consists of approximately 75 one-family detached homes in the R-60 Zone, as bound by Rock Creek Park and the Capital Beltway to the north, Stone Ridge School to the west and south, Park Hill Terrace to the east and Avamere Street to the southeast. Exhibit 12, p. 5. Having no evidence to the contrary, the Hearing Examiner accepts Staff's definition of the general neighborhood.

The neighborhood boundary, which is depicted with a solid line on the location map shown below (Exhibit 12, p. 6), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic:

Neighborhood and Nearby Special Exceptions



Technical Staff reports there is one special exception, an accessory apartment (BA 1915), located next to Petitioner's property at 9321 Cedar Lane. Exhibit 12, p. 5. In addition to the accessory apartment located on Cedar Lane, Ms. Ada DeJesus from DHCA reported a second accessory apartment located at 9322 W. Parkhill Drive. Exhibit 14. Ms. DeJesus advised that both accessory apartment licenses were active and noted there were no RLU's in the neighborhood.

The Hearing Examiner concurs with Technical Staff's conclusion that the addition of an accessory apartment special exception use at the subject property will not result in an excessive concentration of similar uses or adversely affect the residential character of the neighborhood.

C. The Master Plan

The subject property lies within the geographic area covered by the *Bethesda Chevy Chase Master Plan*, approved and adopted in April 1990. Technical Staff advises that there are no Master Plan recommendations relevant to this site. However, a stated goal of the Master Plan is to “[p]rovide for a balanced housing supply so that persons of varying income levels, age, backgrounds, and household characteristics may find suitable housing appropriate to their needs.” Exhibit 8, p. 19. The Master Plan supports “special exception uses that contribute to the housing objectives in the Master Plan.” Exhibit 8, p. 31. More specifically, “[t]he Plan also endorses expanding choices of housing types by provision of accessory apartments.” Exhibit 8, p. 33. Thus, Technical Staff found the proposed accessory apartment was consistent with the *Bethesda Chevy Chase Master Plan*. Exhibit 12, p. 8.

The Hearing Examiner concurs with Technical Staff because the Master Plan supports the R-60 zoning in which accessory apartments are a special exception use. While the main entrance to the accessory apartment is visible from East Parkhill Drive and Cedar Lane, Technical Staff found that the accessory apartment entrance is typical of a side-entry to the basement of a home located on a corner lot. With the exception of the proposed landscaping as shown on the revised Landscape Plan (Exhibit 6(a)), the enlargement of the rear bedroom window required for adequate fire escape and reconfiguration of the awning and stoop to the accessory apartment entrance, no other structural modifications or changes to the property are necessary to accommodate this special exception use. Further, there is sufficient off-street and available on-

street parking on both sides of East Parkhill Drive to accommodate the proposed used and main dwelling. Thus, the existing side entrance and driveway will retain the residential appearance and compatibility sought by the Master Plan. Accordingly, the Hearing Examiner concurs with Technical Staff and finds that the proposed use is consistent with the *Bethesda Chevy Chase Master Plan*.

D. The Proposed Use

The Petitioner is seeking a special exception to allow a 622 square-foot, accessory apartment in the basement of Petitioner's one-story home.⁵ According to the Housing Inspector, the proposed one-bedroom accessory apartment has not been constructed and as a result, the habitable space and occupancy limit will not be determined until the final housing inspection. However, the Housing Code Inspector testified that based on the size of the proposed one bedroom (128 square feet), occupancy will be limited to no more than two people. Tr. 39.

DHCA inspected the property on September 26, 2012, and Housing Code Inspector Ivan Eloisa reported his findings in a memorandum dated September 28, 2012 (Exhibit 13).⁶ The substance of his report is set forth below:

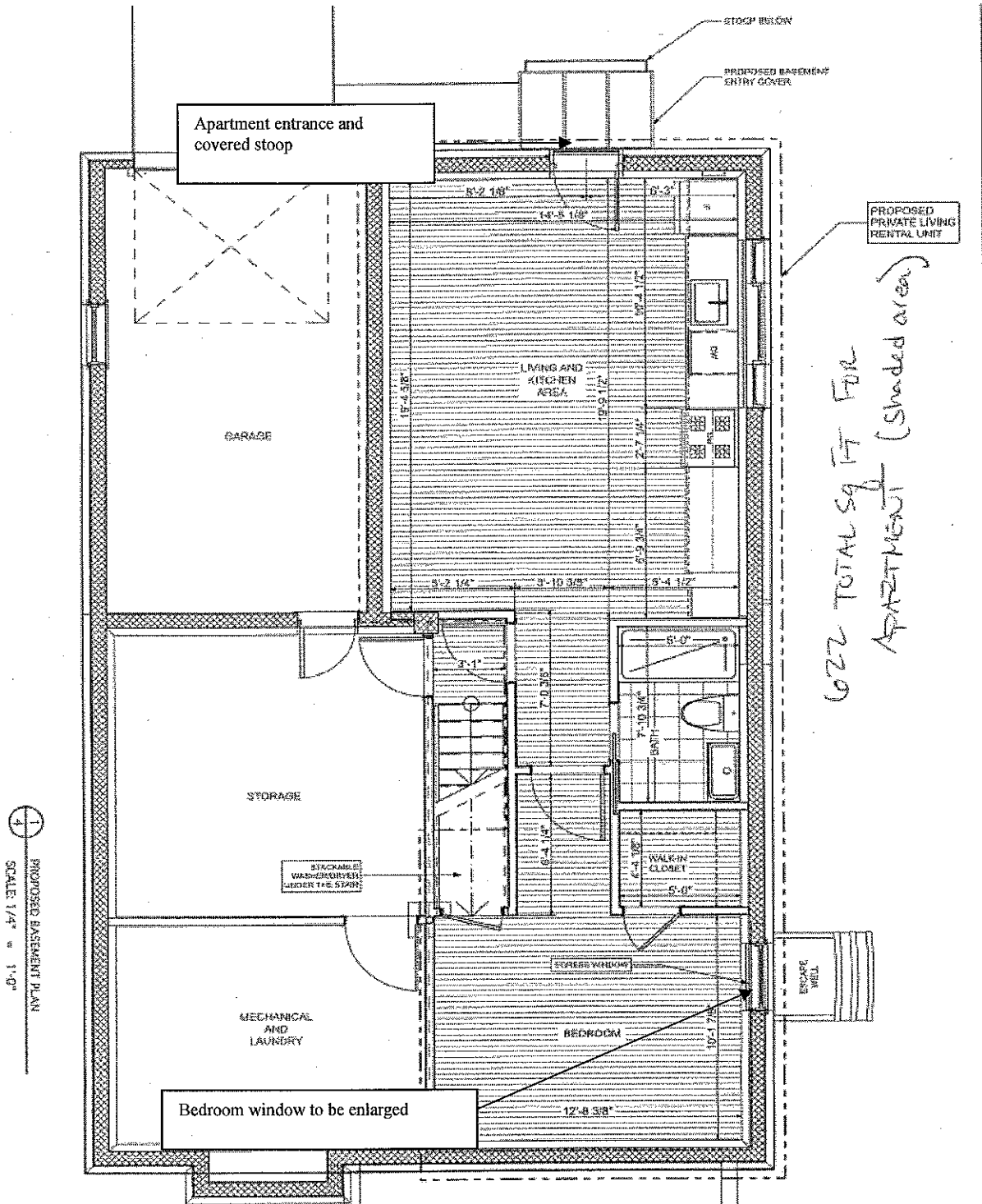
The Preliminary inspection was conducted on September 26, 2012. The Accessory Apartment has not yet been constructed, but the proposed unit will be located in the cellar of the house. The issues regarding the Accessory Apartment standards are as follows:

1. All required building, electrical, and plumbing permits must be obtained and finalized before the unit may be occupied.
2. The cellar sleeping room must have a window of at least five (5) square feet in net clear opening. Must [must open] without the use of a tool with a minimum net clear opening height of 24 inches and a minimum net clear opening width of 20 inches, with the bottom of the opening not more than 44 inches above the floor.

⁵ Technical Staff advises that based on Maryland Department of Taxation and Assessments records (Exhibit 15), the total enclosed area for the home (excluding the basement level) is 1,334 square feet.

⁶ Mr. Eloisa identified the lower level of Petitioner's home as the "cellar of the house" in his written report and as the "basement" during the hearing. Tr. 38-39.

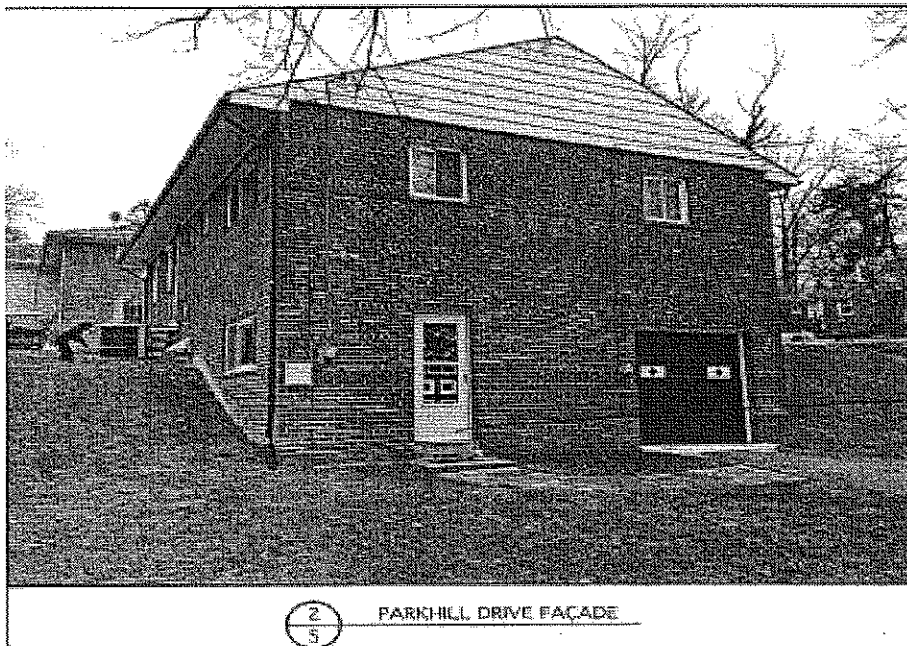
The proposed accessory apartment will include a living/kitchen area, full bathroom and one-bedroom with a walk-in closet as shown below on the Floor Plan (Exhibit 5).



The proposed accessory apartment will be a separate living unit with its own exterior entrance located on the north side of the dwelling which fronts on East Parkhill Drive. Technical Staff summarized the exterior appearance of the accessory apartment as follows (Exhibit 12, p. 16):

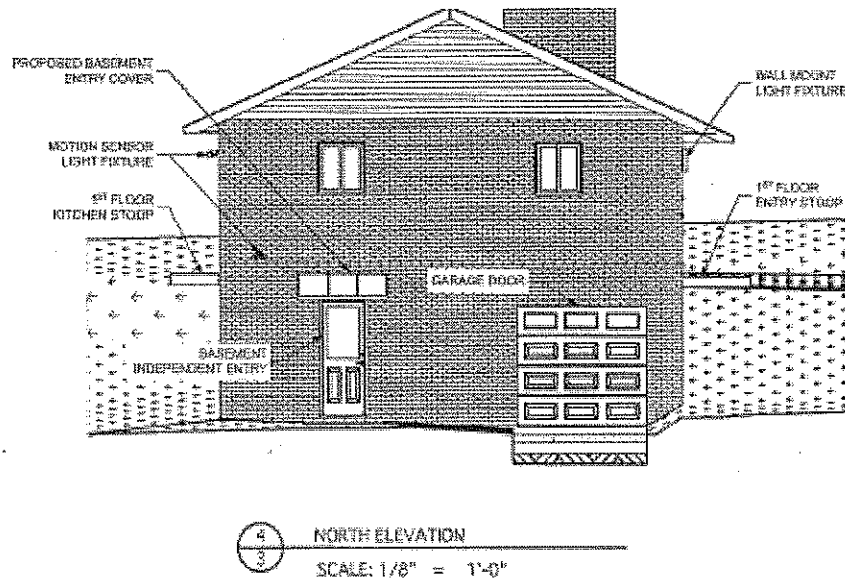
The accessory unit has a separate entrance apart from the main dwelling. The apartment entrance is typical of a side-entry to the lowest elevation of a one-family home. The entrance to the apartment has the appearance of a modest secondary entrance in that it is single width, flush with the side façade of the home and has no additional windows or pilaster flanking the doorway. It will have an awning and a modest stoop. The walkway and grounds of the accessory apartment will be safe and illuminated consistent with typical residential standards.

Access to the accessory apartment entrance is via a paved driveway located off East Parkhill Drive and slate walkway to the accessory apartment door, shown below in a photograph provided by Petitioner (Exhibit 9).



Petitioner also provided an elevation drawing of the side-entry and driveway (Exhibit 16), shown on the next page, showing the location of the exterior lighting and proposed

basement entry cover.⁷



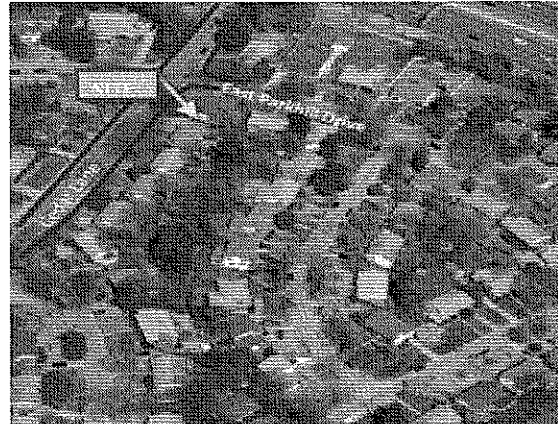
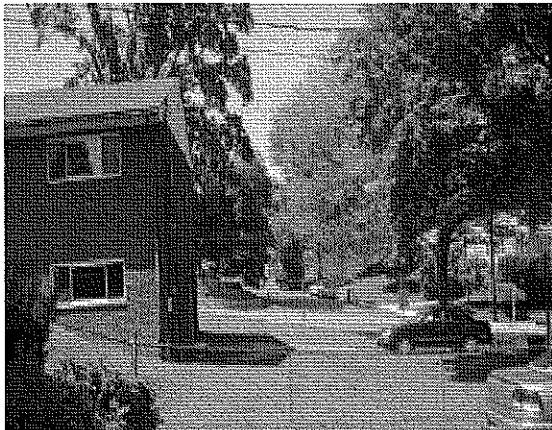
Technical Staff found that the accessory apartment entrance is subordinate to the main dwelling and preserves the appearance of a one-family dwelling. Technical Staff also found that the proposed modifications to the stoop “will be compatible with the existing dwelling and surrounding properties.” Exhibit 12, p. 24.

Technical Staff found: “Adequate parking for the main dwelling and the accessory apartment can be accommodated with the two-parking spaces on the driveway and the one space in the garage and on street parking in the neighborhood.” Exhibit 12, p. 9. Technical Staff advises that while parking is not permitted on Cedar Lane, parking is permitted on both sides of East Parkhill Drive and in the neighborhood. Technical Staff, however, noted that the “[a]ccess to the driveway is from an area along East Parkhill Drive designated as a “no parking” area due to its proximity to the intersection. Any vehicle that could not park on the site would need to

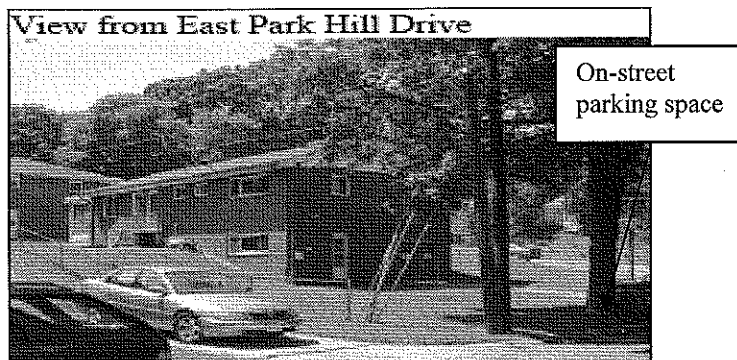
⁷ Staff referred to the basement entry cover as an awning. Exhibit 12, p. 16. Petitioner testified that existing awning and stoop were being replaced to bring it in compliance with the current building code. Tr. 28.

park further down the East Parkhill Drive.” Exhibit 12, p. 17.

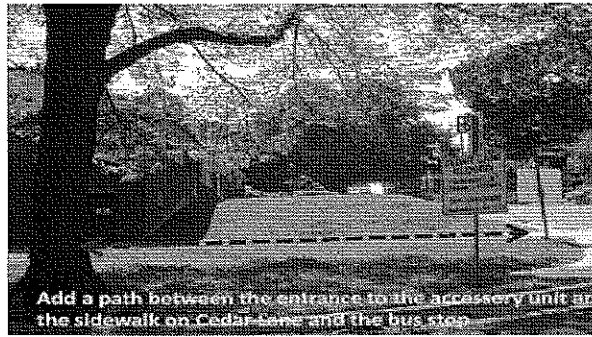
Technical Staff provided the following photographs depicting the available parking on the driveway and the limited parking restriction on East Parkhill Drive, depicted with a solid line on the aerial photograph (Exhibit 12, pp. 17 and 18):



Petitioner confirmed that parking is restricted directly in front of and next to the driveway on East Parkhill Drive. However, Petitioner testified that there is enough space to park a car in front of her property on either side of the street as shown in the following photograph taken from the Technical Staff report (Exhibit 12, p. 4). Tr. 36.

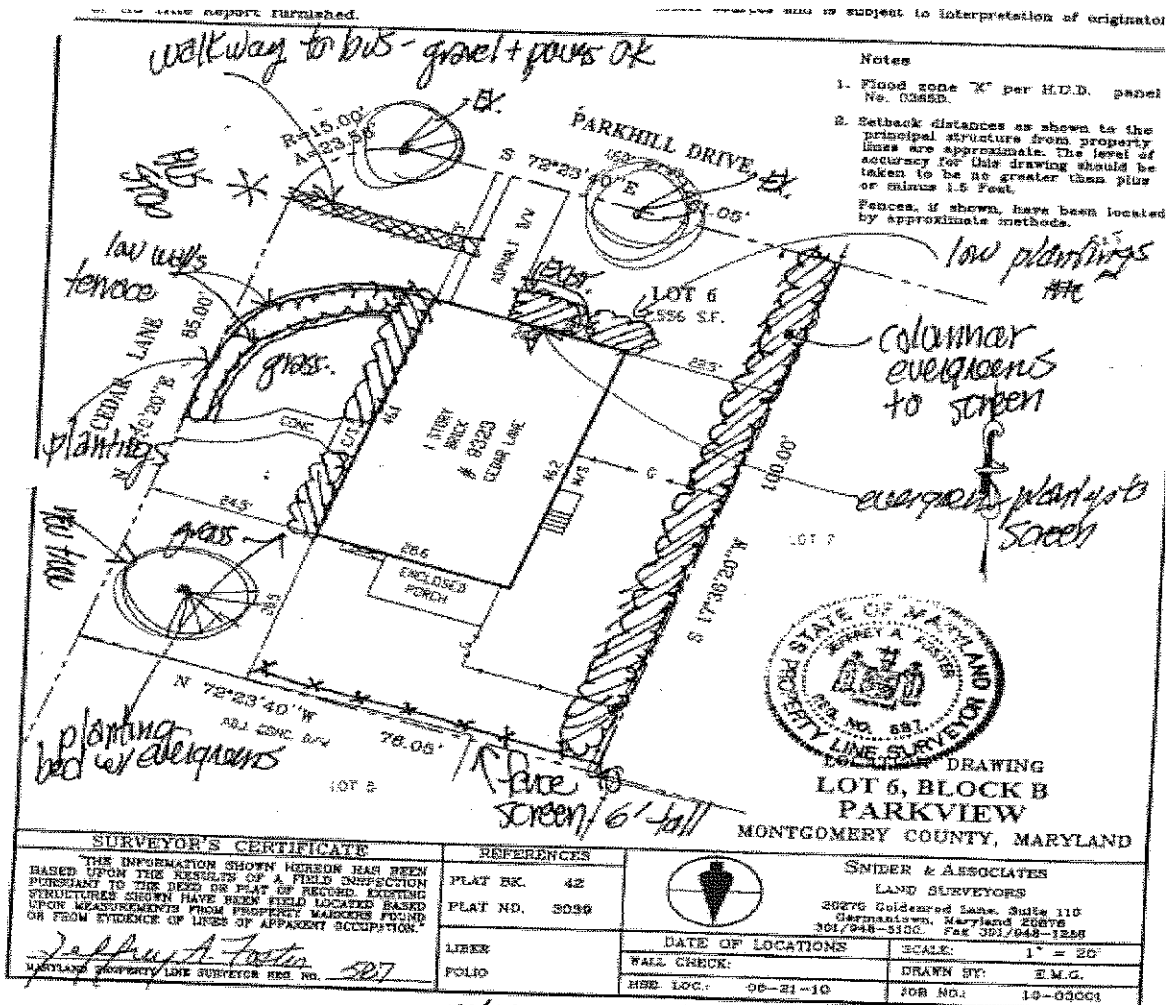


The proposed walkway from the driveway to the bus stop on Cedar Lane is shown on the next page in a photograph taken from the Technical Staff report (Exhibit 12, p. 9).



Add a path between the entrance to the accessory unit and the sidewalk on Cedar Lane and the bus stop.

The proposed walkway is shown below on the revised Landscape Plan (Exhibit 6(a)), which Technical Staff reviewed and approved on September 25, 2012.



E. Traffic Impacts

Technical Staff found that “[t]he proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance.” Exhibit 12, p. 8.

Transportation Staff reported (Exhibit 12):

Local Area Transportation Review

Using trip generation rates included in the *Local Area Transportation Review (LATR)/Policy Area Mobility Review (PAMR) Guidelines*, the single-family dwelling on the property is estimated to generate one peak-hour trip during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Using the same rates, the accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods.

Since the existing house and the accessory apartment together will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition. With documentation of site trip generation as above, the subject petition satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

As noted above, the single-family dwelling and the accessory apartment on the property together will generate less than four peak-hour trips during the weekday morning and evening peak periods. The subject petition is therefore not subject to the PAMR requirements of the APF test.

Due to the small scale of the proposed use, the Hearing Examiner agrees with Technical Staff that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impact on the area roadways and pedestrian facilities. Exhibit 12, p. 21.

F. Environmental Impacts

With the exception of the proposed landscaping as shown on the revised Landscape Plan (Exhibit 6(a)), the enlargement of the rear bedroom window required for adequate fire escape and replacement of the awning and stoop at the accessory apartment entrance, no other structural modifications or changes to the property are necessary to accommodate this

special exception use. Technical Staff noted the proposed modifications or improvements will be compatible with the dwelling and surrounding properties. Exhibit 12, p. 24. Technical Staff advises that the property is exempt from the Forest Conservation Law (Exhibit 7) and “[t]here are no other environmental issues or concerns associated with the applicant’s proposed accessory apartment.” Exhibit 12, p. 10. Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

G. Community Response

There has been no response from the community to the subject petition.

III. SUMMARY OF THE HEARING

Petitioner Samantha Tuttamore testified at the public hearing in support of the petition. DHCA Housing Code Inspector, Ivan Eloisa, also testified as to compliance with the Housing Code. There was no opposition at the hearing.

A. Petitioner’s Case

Petitioner Samantha L. Tuttamore:

Petitioners testified that she received a copy of the Technical Staff report towards the end of September. Tr. 8. Petitioner met with Technical Staff member, Margaret Rifkin, on September 25, 2012, to review the revised Landscape Plan (Exhibit 6(a)). They also reviewed the seven conditions noted on page two of the staff report. Petitioner agreed to be bound by the conditions of approval. Tr. 9-11.

Ms. Rifkin reviewed and approved the revised Landscape Plan (Exhibit 6(a)) which she initialed and dated (e.g., “MKR-9/25/12”). Petitioner indicated that she has spent a lot of money cleaning up the property by removing all of the plants and bushes around the house. Since then, Petitioner has been working with a landscape architect. The revised plan includes the walkway

between the driveway and bus stop on Cedar Lane (Condition no. 4).

Petitioner said she was advised to wait until the hearing to see if she would need to obtain a variance from the front-yard setback as noted in Condition no. 5 of the Technical Staff report. Tr. 12-17. Petitioner indicated she intended to seek a variance and was informed that the record would be left open to allow her time to file for the variance. Tr. 20-24.

Petitioner also submitted an Elevation Plan (Exhibit 16) for the property which depicts the location and type of exterior lighting on the dwelling, the proposed basement entry cover (awning over the stoop), and the egress window in the rear bedroom. The original awning and concrete stoop at the accessory apartment entrance were being replaced to bring it into compliance with current building code requirements. During a site visit to the property, Petitioner testified that Ms. Rifkin informed her that the exterior lighting was residential and the accessory apartment entrance (covered stoop) was adequate for residential use. She testified that she reviewed the elevation drawings with Ms. Rifkin during their meeting in September.

Petitioner submitted a copy of her deed (Exhibit 17) and affidavit of posting (Exhibit 18). Tr. 26. Petitioner adopted the findings in the Technical Staff report as her own evidence. Petitioner identified and described the revised Landscape Plan (Exhibit 6(a)). Petitioner used the location drawing (Exhibit 4) of her home and property for the revised plan which included "green screen, shade trees, ornamental bushes and shrubs, as well as a fence." The revised plan also included the proposed walkway from the driveway to the bus stop on Cedar Lane. Tr. 25-31. Petitioner identified the two photographs, taken by her architect, of the front and side views of her home shown in Exhibit 9. She stated that the Cedar Tree in the front yard has since been removed. Tr. 32-33.

Petitioner identified the floor plan for the one-bedroom accessory apartment which will be

approximately 622 square feet. The accessory apartment has its own separate entrance and does not include the garage, storage or mechanical and laundry room areas. The interior access from the accessory apartment to the main dwelling is secure. The apartment has a full bath and kitchen and will not share any space with the main dwelling. Vehicular access to the dwelling is from the driveway located off East Parkhill Drive. There are three off-street parking spaces; two on the driveway and one in the garage. Parking is permitted on both sides of the street on East Parkhill Drive with the exception of the area next to the driveway. She indicated there was still space to park next to her property on either side of East Parkhill Drive and there has never been an issue being able to park on the street or in the neighborhood. Petitioner owns one vehicle as will provide at least one off-street parking space for the accessory apartment tenant. Tr. 34-37.

Petitioner indicated that Mr. Eloisa answered all her questions during the preliminary inspection. She testified that the accessory apartment next to her house on Cedar Lane is vacant. Tr. 40 and 42.

B. Public Agency Testimony

Housing Code Inspector Ivan Eloisa:

Housing Code Inspector Ivan Eloisa testified that he inspected the property on September 26, 2012, and reported his findings in a memorandum identified as Exhibit 13. He testified that the basement was partially finished and the proposed unit had not been constructed. As a result, he could not determine the habitable space or occupancy limits. The unit will have a large front room used as a living/dining/kitchen area, a hallway with a bathroom, one bedroom with a walk-in closet. There is a window in the kitchen which does not have to be enlarged. The bedroom is towards the rear of the apartment and underground. There is one window in the bedroom which must be enlarged to meet the requirements for safe egress. The bedroom is estimated to be

approximately 128 square feet. He estimated that based on the size of the bedroom occupancy will likely be limited to no more than two people.

Mr. Eloisa indicated that he did not see any issues with parking. It was his opinion that the proposed accessory apartment will not have a negative impact on the residential character of the neighborhood. Mr. Eloisa identified the memorandum from Ada DeJesus from DHCA (Exhibit 14) reporting two active accessory apartments in the neighborhood. He confirmed the license for the unit next to Petitioner's house (9321 Cedar Lane) is active but the apartment is vacant. The second accessory apartment is located on West Parkhill Drive (other side of Cedar Lane) which he identified as part of the Locust Hill neighborhood. Tr. 37-43.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions 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 will have satisfied all the requirements to obtain the special exception if she complies with the recommended conditions. Exhibit 12.

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 Petitioners comply with the recommended conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code Section 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and in the general neighborhood. 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 Section 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 physical and operational characteristics of accessory apartments (Exhibit 12, p. 15):

- (1) The existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) The provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
- (3) A separate entrance and walkway and sufficient exterior lighting;
- (4) Sufficient parking;
- (5) The existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) The potential for additional noise.

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 12, p. 15). However, in its report, Technical staff identified two non-inherent site conditions as follows: 1) the apartment entrance was highly visible because it was a corner lot that lacked adequate landscape; and 2) limited parking restriction for on-street parking on East Parkhill Drive from the intersection just beyond the entrance to the driveway. The Hearing Examiner does not agree that these site conditions are non-inherent adverse effects of proposed accessory apartment.

The visibility of the accessory apartment entrance is typical of a side-entry door located on a corner lot. The only modifications proposed for the accessory apartment use include installation of an egress window in the bedroom for safety and a reconfigured

covered stoop. The egress window will not be visible from the street. As noted by Technical Staff, the modification to the stoop will be compatible with the existing dwelling and surrounding neighborhood. The entrance is visible and will remain visible even with the proposed landscaping shown on the revised landscape plan (Exhibit 6(a)) because of its corner lot location and not its use as an accessory apartment entrance.

There is adequate off-street parking on the driveway (two parking spaces) and in the garage (one parking space) to accommodate the accessory apartment use and the main dwelling. Petitioner has one car and will provide at least one off-street parking space for the accessory apartment tenant. On-street parking is allowed on both sides of East Parkhill Drive with the limited exception of the area from the intersection to just beyond Petitioner's driveway. Even with this restriction, there is sufficient on-street parking for a fourth vehicle if needed.

Technical Staff found (Exhibit 12, pp. 15-16):

In the instant case, there are no additional adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit has a separate entrance apart from the main dwelling. The apartment entrance is typical of a side-entry to the lowest elevation of a one-family house. The entrance to the apartment has the appearance of a modest secondary entrance in that it is single width, flush with the side façade of the home and has no additional window or pilasters flanking the doorway. It will have an awning and a modest stoop. The walkway and grounds of the accessory apartment will be safe and illuminated consistent with typical residential standards.

Parking for the accessory apartment is adequate. Currently there is room for two vehicles to park on the property's driveway and for one to park within the garage. There is room for a fourth car to park on-street within the neighborhood. On street parking is allowed on both sides of East Parkhill Drive beyond the initial "no parking" near the intersection and adjacent and

opposite the site. On-street parking is also allowed on the other streets within the neighborhood.

Based on these findings, Staff concluded (Exhibit 12, p. 16):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use.

Based on these circumstances, and considering size, scale, light, traffic and environment, the Hearing Examiner concludes that there are no non-inherent adverse effects arising from the proposed accessory apartment warranting denial of this petition.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21 General conditions.

§ 59-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(a).

(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 *Bethesda-Chevy Chase Master Plan*, approved and adopted in 1990. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 zone, is consistent with the goals and objectives of the *Bethesda-Chevy Chase 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.*

Conclusion: Technical Staff reports: "The proposed special exception will be in harmony with the general character of the neighborhood once the improvements are made to the landscape plan." Petitioner submitted a revised Landscape Plan (Exhibit 6(a)) reviewed and approved by Technical Staff on September 25, 2012. The only exterior modifications proposed are the enlargement of the accessory apartment bedroom window required by DHCA (Exhibit 13) and replacement of the existing

basement entry awning and stoop to bring it into compliance with the building code. It therefore will maintain its residential character. The accessory apartment is fully contained in the basement of an existing dwelling with a separate entrance typical of a side-entrance to a basement for a one-family home. There is sufficient off-street parking for three vehicles (two on the driveway and one in the garage) to accommodate the main dwelling and accessory apartment. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There are two accessory apartment uses within the Staff-defined neighborhood. The Hearing Examiner finds that the addition of the proposed accessory apartment to the neighborhood will not be excessive or change the residential character of the neighborhood. 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 surrounding residential neighborhood.

- (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 the answer to the previous section of this report, the Hearing Examiner agrees and finds that 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: "Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity. The use will cause no objectionable illumination or glare as the provided lighting is residential in character." Exhibit 12, p. 20. Since the use will be indoors and residential, the Hearing Examiner finds 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: Based on a combined reading of the reports by Technical Staff (Exhibit 12) and DHCA (Exhibit 14), there are two approved special exceptions (accessory apartment uses) within the neighborhood which is comprised of approximately 75 one-family detached homes. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the proposed special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and 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 will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area of the subject site.

- (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.*

Conclusion: Technical Staff indicates that “[t]he proposed special exception will be adequately served by existing public services and facilities.” Exhibit 12, p. 21. The evidence supports this conclusion.

- (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:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception’s impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner 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 will 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). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. 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. For the same reason, PAMR is also satisfied. Therefore, the 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 Hearing Examiner concurs with Technical Staff's conclusion that the "the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic." Exhibit 12, p. 21. Based on the evidence of record, especially the availability of adequate off-street parking and the limited number of additional

trips generated by the special exception, the Hearing Examiner finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), 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 accessory apartment is located in the basement of an existing one-family detached dwelling and therefore shares a wall in common, as required for a lot of this size (under one 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 the basement of 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 house was built in 1952. Exhibit 15. 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 use as proposed does not violate any of the provisions of this subsection. Also, a requirement that the occupancy of the main dwelling and the accessory apartment meet all these standards will be a condition of this approval.

- (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 separate side entrance located on the north side of the dwelling. The entrance is distinct and separate from the main dwelling entrance and according to Staff, "has the appearance of a typical side-entry to a basement of one-family home." Exhibit 12, p. 24. The

Hearing Examiner concurs with Technical Staff's finding that the "proposed accessory apartment preserves the appearance of a one-family dwelling." *Id* Thus, the Hearing Examiner finds there will 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: The only proposed external modifications to the dwelling related to the proposed accessory apartment include the installation of an egress window in the bedroom required by DHCA to provide adequate fire escape and replacement of the covered stoop to bring it in compliance with current building code. As previously noted, Technical Staff indicated the proposed modifications "will be compatible with the existing dwelling and surrounding properties." Exhibit 12, p. 24.

- (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. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.*

Conclusion: The proposed accessory apartment has not been constructed. However, the floor area of the proposed accessory apartment will be approximately 622 square feet in size and is under the maximum 1,200 square feet restriction. According to the

Maryland tax records (Exhibit 15), the enclosed floor area for the one-story home (excluding the basement) is 1,334 square feet. Technical Staff noted: “[w]hile the house is indeed one story, it actually has two levels if the basement is included. The apartment is approximately one half of the basement, and therefore 25% of the area of the two levels combined.” Exhibit 12, p. 24. The Hearing Examiner finds, as did Technical Staff, that the proposed accessory apartment is subordinate to the main dwelling.

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 the main dwelling on the property.

- (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 the deed submitted into the record, Petitioner purchased the property on July 7, 2010. Exhibit 17. 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 occupancy of 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: Petitioners submitted a deed dated July 7, 2010, evidencing sole ownership of the subject property. Exhibit 17. Therefore, the Hearing Examiner concludes that this condition has been met.

- (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 lot is approximately 7,556 square feet in size and therefore satisfies the 6,000 square feet minimum lot size. According to Technical Staff, the subject property conforms to all the applicable development standards of the R-60 Zone, except for the front-yard setback. Technical Staff's initial determination was based on the setback distances shown on a location drawing of the property (Exhibit 4) which showed that the existing front-yard setback was 0.5 feet less than required in the R-60 Zone. In lieu of seeking a variance, Petitioner obtained and submitted a new boundary survey dated October 17, 2012 (Exhibit 20), which revealed that the existing front-yard setback met the 25 feet minimum front-yard setback requirement in the R-60 Zone. In a supplemental submission (Exhibit 21) Technical Staff, Ms. Rifkin, confirmed that she reviewed and approved the

boundary survey as meeting the front-yard setback requirements and that a variance was not required. Based on the evidence of record, the Hearing Examiner finds that the proposed special exception request conforms to all applicable development standards of the R-60 Zone. The following table from the Technical Staff report (Exhibit 12, p. 14), as corrected regarding the front-yard setbacks, summarizes the relevant development standards for the application.

| Development Standard | Min/Max Required | Existing | Applicable Zoning Provision |
|---|------------------|--|------------------------------------|
| Maximum Building Height | 2.5 stories | 1 story | §59-C-1.327 |
| Minimum Lot Area | 6,000 sq. ft. | 7,556 sq. ft. | §59-G-2.00(c)(1) §59-C-1.322(a) |
| Minimum Lot Width at Front Building Line | 60 ft. | 100 ft. | §59-C-1.322(b) |
| Minimum Lot Width at Street Line | 25 ft. | 85+ ft. | §59-C-1.322(b) |
| Minimum Setback from Street Cedar Lane/ East Parkhill Drive | 25 ft. | 25.01 ft./ 25.41 ft. | §59-C-1.323(a) |
| Maximum Building coverage | 35 percent | 18 percent | §59-C-1.328 |
| Maximum Floor Area for Accessory Apartment | 1,200 sq. ft. | 622 sq. ft. | § 59-G-2.00(a)(9) |
| Parking | 4 total | 4 total 2 in driveway 1 in garage 1 on-street | § 59-G-2.00(c)(3) |

(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: Based on a combined reading of the reports by Technical Staff (Exhibit 12) and DHCA (Exhibit 14), there are two approved accessory apartments within the neighborhood. One accessory apartment (vacant) is located next to Petitioner's home at 9321 Cedar Lane (special exception case no. BA 1915) and the other accessory apartment is located at 9322 W. Parkhill Drive. The neighborhood is comprised of approximately 75 one-family homes. Accessory apartments are by definition a residential use. The Hearing Examiner, even considering there are two approved accessory apartments within the neighborhood, concurs with Technical Staff's conclusion and finds that the proposed accessory apartment will not create an excessive concentration of similar uses in the general neighborhood. Exhibit 12, p. 26.

(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: The Hearing Examiner concurs with Technical Staff's conclusion that there is adequate off-street parking (two spaces on the driveway and one space in the garage) and on-street parking on both sides of East Parkhill Drive to accommodate the accessory apartment and main dwelling. The Hearing Examiner finds that the minimum requirement of two (2) off-street parking spaces has been met.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in Article 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector's report (Exhibit 13) specifies certain conditions. Petitioner agreed to meet all conditions, and will comply with directives of the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Samantha L. Tuttamore, BOA No. S-2846, which seeks a special exception for an accessory apartment to be located at 9323 Cedar Lane, Bethesda, Maryland, be GRANTED, with the following conditions:

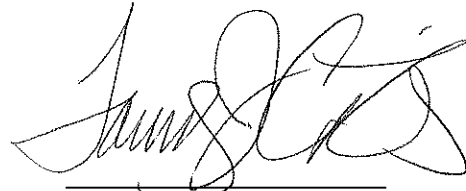
1. Petitioner is bound by her testimony, representations and exhibits of record;
2. Petitioner must comply with the conditions set forth in the Memorandum of Ivan Eloisa, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
 - a. All required building, electrical, and plumbing permits must be obtained and finalized before the unit may be occupied.
 - b. The accessory apartment bedroom must have a window of at least five (5) square feet in net clear opening. The window must open without the use of a tool and have a minimum net clear opening height of 24 inches and a minimum net clear opening width of 20 inches, with the bottom of the opening not more than 44 inches above the floor.
3. Petitioner must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
6. Petitioner must not receive compensation for the occupancy of more than one dwelling

unit; and

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: December 3, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tammy J. CitaraManis', written in a cursive style.

Tammy J. CitaraManis
Hearing Examiner