

**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**

<b>IN THE MATTER OF:</b>	*	
<b>JONATHAN KATZ &amp; TERRI MORELAND</b>	*	
	*	Board of Appeals No. S-2847
Petitioners	*	(OZAH No. 12-37)
	*	
Jonathan Katz & Terri Moreland	*	
For the Petition	*	
*****	*	
Robert Goff	*	
	*	
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-2847, Jonathan Katz and Terri Moreland seek approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 914 Larch Avenue, Takoma Park, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lots numbered 11 & 12, Block 115, in the Glazewood Manor Subdivision. The Tax Account number is 03175032.

On June 4, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for November 1, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated October 15, 2012, recommended approval of the special exception, with four (4) conditions. Exhibit 13.<sup>1</sup>

A Housing Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on October 16, 2012. Housing Code Inspector Robert Goff (Mr. Goff) reported his findings in a memorandum dated October 19, 2012 (Exhibit 14). Mr. Goff reported the accessory apartment to be 1,024 square feet in size with 345 square feet of habitable space. Based on the habitable space, Mr. Goff determined that occupancy was limited to no more than two (2) unrelated persons or a family of three.

Mr. Goff re-inspected the property on November 7, 2012, and took photographs of the street light and existing parking in front of the accessory apartment entrance. He reported his findings in a memorandum dated November 8, 2012 (Exhibit 17), which included a letter from Ada DeJesus from DHCA Licensing and Registration (Ms. DeJesus) (Exhibit 17(b) and three photographs of the street light and on-street parking in front of the accessory apartment entrance (Exhibit 17(a) (i)-(iii)). Ms. DeJesus reported one accessory apartment and one registered living unit (RLU) in the vicinity of Petitioners' property. However, based on the

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

addresses provided by Ms. DeJesus, the accessory apartment and RLU are located outside the neighborhood boundary.<sup>2</sup> Exhibit 17(b).

The hearing went forward as scheduled on November 1, 2012. Petitioners appeared *pro se*. Petitioners executed an Affidavit of Posting (Exhibit 15). Both testified in support of the petition and agreed to meet all the conditions set forth in the Technical Staff Report (Exhibit 13) and the Housing Code Inspector's report (Exhibit 14). No opposition appeared at the hearing.

The record was held open until November 13, 2012, to give Petitioners time to submit a copy of their deed and for Mr. Goff to submit a supplemental report and photographs of the street light and on-street parking on the service road off of New Hampshire Avenue in front of the accessory apartment entrance. It also allowed time for the Court Reporter to complete the hearing transcript. The record closed as scheduled with no further documents other than Petitioners' deed (Exhibit 16), Mr. Goff's supplemental report and photographs (Exhibit 17(a)-(b)), and the transcript being received.

On December 10, 2012, Technical Staff submitted an e-mail and revised Technical Staff Report (Exhibit 18 and Exhibit 19). Technical Staff made the following revisions to the October 15, 2012 staff report (Exhibit 13): 1) Staff removed one condition of approval -- Condition number 4 which required that Petitioners remove the lot line between lot 11 and lot 12 to combine the lots into one lot -- as unnecessary since Petitioners were not proposing any external modifications to the property; 2) Staff provided a more accurate definition of the neighborhood boundary to the north and noted the change on the neighborhood boundary map; 3) Staff deleted the previously noted special exception (PG SE 3030) from the

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<sup>2</sup> According to DHCA, the accessory apartment (PG SE 3030), located at 1011 Elm Avenue, was withdrawn in 1999. DHCA identified the address for the RLU as 4501 Elm Avenue. Exhibit 17(b).

neighborhood boundary map and reported that there were no special exceptions within the neighborhood; and 4) Staff revised the development standards chart and applicable sections of the staff report to reflect that the proposed special exception complies with the development standards for the R-60 Zone and the standards and requirements of Zoning Ordinance § 59-G-2.00(2). Exhibit 18.

Since Technical Staff’s supplemental submissions were received after the record closed as scheduled, the Hearing Examiner re-opened the record by Order dated December 12, 2012 (Exhibit 21), in order to receive Technical Staff’s e-mail and revised staff report dated December 10, 2012, into the record as Exhibits 18 and 19. In order to provide the Petitioners with an opportunity to review and comment on Technical Staff’s revised staff report, the record was held open until December 24, 2012. The record closed as scheduled with no other documents other than Technical Staff’s e-mail and revised staff report (Exhibits 18 and 19) being received.

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

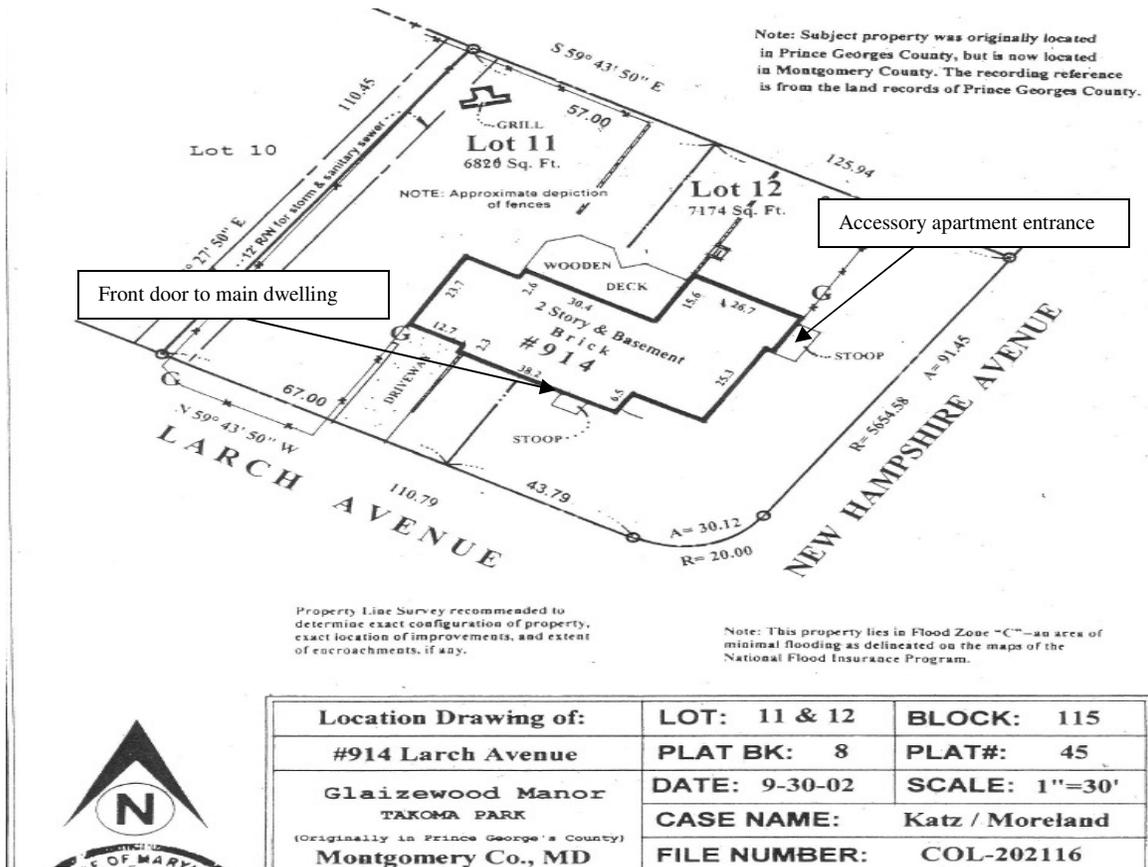
### A. The Subject Property and Its Current Use

The subject property is located at 914 Larch Avenue, Takoma Park, Maryland, in the Glazewood Manor, on the northwest corner of New Hampshire Avenue and Larch Avenue.

The Zoning Map of the area is shown below (Exhibit 10):



The property is in the R-60 Zone and consists of two lots. Lot 11 is 6,820 square feet and Lot 12 is 7,174 square feet. They have a combined total area of 13,994 square feet. The Site Plan for the property is shown below (Exhibit 4):



Technical Staff advises that “since both lots are owned by the [Petitioners], for zoning purposes related to this application for an accessory apartment within an existing dwelling, the two pieces of property are considered one lot.” Exhibit 18, p. 10.<sup>3</sup> The property is improved with a two-story single-family detached dwelling with a basement and east wing addition for a total enclosed area of 4,066 square feet. The main dwelling was built in 1948

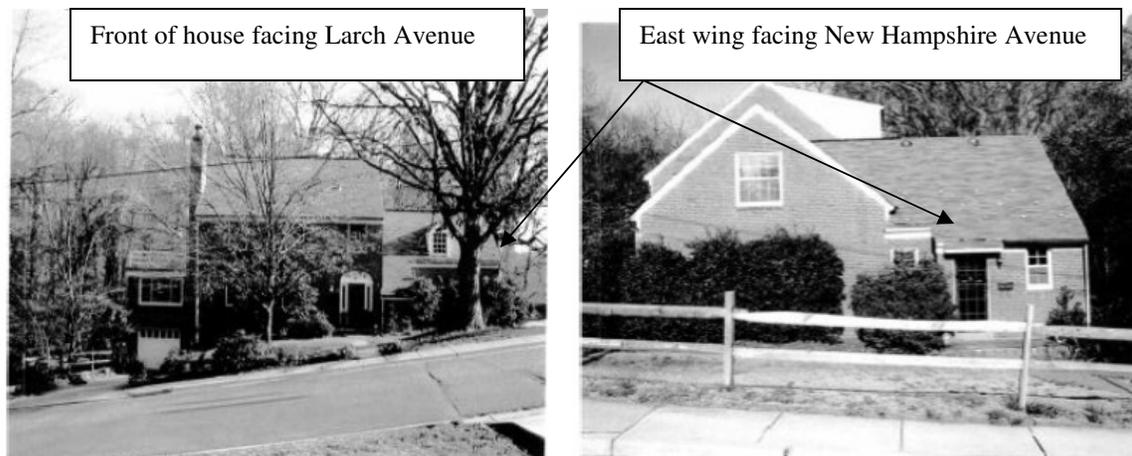
<sup>3</sup> Since the property was being evaluated as one lot and Petitioners were not proposing any external modifications to the dwelling which would require a building permit, Technical Staff found that the proposed special exception complied with the development standards of the R-60 Zone. However, Technical Staff advised that “[i]f a building permit was needed for a future addition, Planning Staff would require the property to be in compliance with Chapter 50, the Subdivision Regulations.” Exhibit 18, p. 14.

and faces Larch Avenue. Exhibit 12. The east wing addition is level with the first floor of the main dwelling with its own exterior entrance facing New Hampshire Avenue.<sup>4</sup>

Technical Staff described the subject property as follows (Exhibit 18, p. 3):

The house is located on the corner of Larch Avenue and New Hampshire Avenue. The lot gently slopes away from New Hampshire Avenue following the slope of Larch Avenue. The yard is landscaped with trees and shrubs. The site has its sole vehicular access point from Larch Avenue which is a driveway with adequate space for parking two vehicles. Parking is permitted along the north side of Larch Avenue along the property frontage. A side wing of the house with a door to the accessory unit faces New Hampshire Avenue.

Photographs of the front and side (east wing) of the dwelling from the Technical Staff report are shown below and on the next page of the report (Exhibit 18, p. 6):



## B. The Surrounding Neighborhood

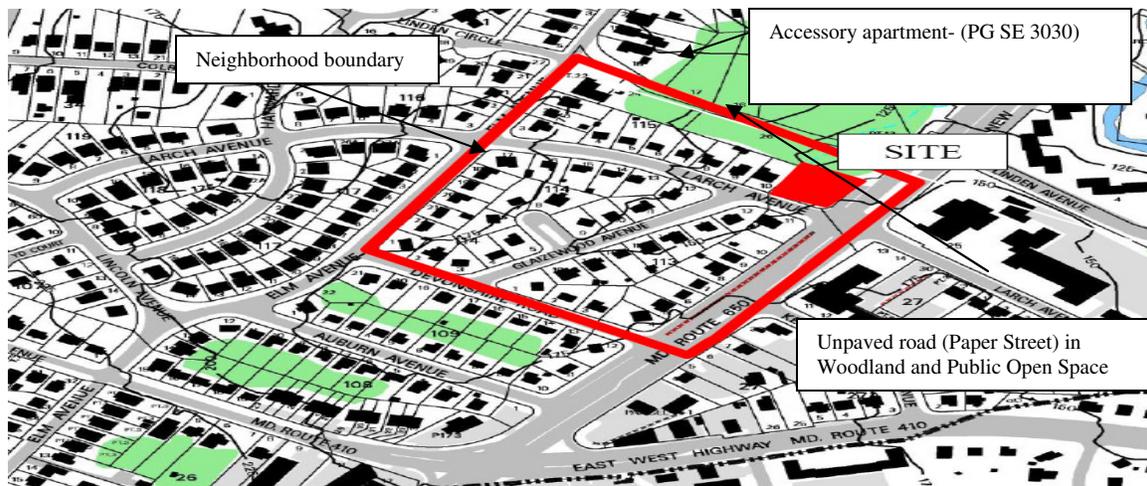
Technical Staff defined the general neighborhood as bound by Elm Avenue to the west, Devonshire Road to the south, New Hampshire Avenue to the east and a paper

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<sup>4</sup> Petitioners indicated that they have owned and resided in the main dwelling for more than 12 years. The east wing addition was used as a medical office by the former owner. Petitioners are proposing to convert the unused office space into a two bedroom accessory apartment. Exhibit 3.

street in the Woodland to the north. Exhibit 18, p. 3.<sup>5</sup> 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 18, p. 4), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic.



Technical Staff advises that the neighborhood consists of 60 single-family detached homes and reports there are no special exceptions within the neighborhood. Exhibit 18, p. 21. In a memo to Mr. Goff dated November 6, 2012, Ms. DeJesus reported that there was one accessory apartment and one RLU in the vicinity of the subject property.<sup>6</sup> Exhibit 17(b). Based on the addresses provided by Ms. DeJesus, the accessory apartment (withdraw in 1999) and RLU are located outside the neighborhood boundary.

<sup>5</sup> The paper street to the north is identified in the *Takoma Park Master Plan* (Exhibit 8) as an unpaved right of way. *Master Plan*, Appendix A, Area H, Map 34, p. A.9.

<sup>6</sup> In its October 15, 2012, staff report Technical Staff incorrectly identified one accessory apartment (PG SE 3030) as being located at the corner of Elm Avenue and Larch Avenue, thus concluded it was within the neighborhood boundary (Exhibit 13, pp. 3-4, 15-16 and 21). According to DHCA, the accessory apartment (PG SE 3030) is located at 1011 Elm Avenue which is outside the neighborhood boundary (Exhibit 17(b)). In the revised staff report (Exhibit 18), Technical Staff corrected the neighborhood map on page 4 and § 59-G-2.00(c) (2) on page 21 to reflect that there are no special exceptions located within the neighborhood. However, Technical Staff inadvertently failed to make the necessary revisions to omit reference PG SE 3030 on pages 3 and 15 of the staff report.

The Hearing Examiner concurs with Technical Staff that the proposed special exception in the neighborhood will not be excessive or change the residential character of the neighborhood. Exhibit 18, p. 16.

### **C. The Master Plan**

The subject property lies within the *Takoma Park Master Plan*, approved and adopted in December 2000 (“Master Plan”). Exhibit 8. Technical Staff advises that there are no Master Plan recommendations relevant to this property. However, the Master Plan supports the protection of existing residential neighborhoods and properties along New Hampshire Avenue. Exhibit 18, p. 5. Technical Staff found: “The proposed accessory apartment is a residential use consistent with the character of the neighborhood and is therefore consistent with the Plan.” Exhibit 18, p. 6.

The Hearing Examiner agrees with Technical Staff because the Master Plan supports the R-60 zoning which permits accessory apartments by special exception. *Master Plan*, Appendix B, at p. B-16 (Area H, Map 50). The accessory apartment entrance is visible from New Hampshire Avenue and, as described by Technical Staff, “. . . has the appearance of an attractive auxiliary entrance.” Exhibit 18, p. 5. With the exception of the enlargement of the bedroom windows required by DHCA, no other structural or external modifications or changes are proposed or required to accommodate this special exception use. Since the exterior of Petitioners’ home will not be changed, it will retain the residential appearance and compatibility sought by the Master Plan. The Hearing Examiner finds that the proposed use is consistent with the *Takoma Park Master Plan*.

### **D. The Proposed Use**

The Petitioners are seeking a special exception to allow an accessory apartment

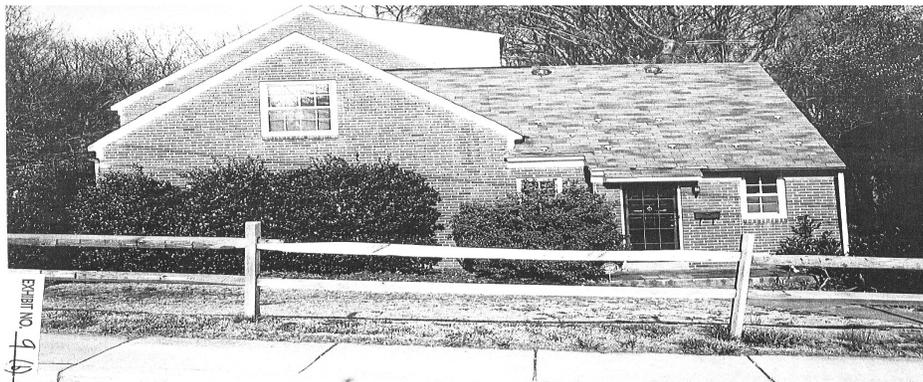
located in the east wing of their single-family home which was used as a medical office by the former owner. Petitioners are proposing to convert the unused office space into a two-bedroom accessory apartment. Exhibit 3. According to Mr. Goff, the proposed accessory apartment is 1,024 square feet in size with 345 square feet of habitable space, thereby limiting occupancy to no more than two (2) unrelated persons or of a family of three. Exhibit 14.<sup>7</sup>

The accessory apartment is a separate living unit with its own exterior entrance facing New Hampshire Avenue. A stone walkway from the accessory apartment entrance connects to a sidewalk. The sidewalk extends along the east property line to north side of Larch Avenue down to Glazewood Avenue. The entrance is illuminated with a porch light.

Technical Staff reports (Exhibit 18, p. 5);

The accessory apartment entrance is clearly distinct from the entrance to the main dwelling and has the appearance of an attractive auxiliary entrance. The accessory apartment does not detract from the appearance of the neighborhood. Adequate lighting, residential in character, is located above the entrance to the accessory apartment.

Petitioner provided an up-close photograph of the accessory apartment entrance, porch light, walkway and sidewalk in front of the accessory apartment shown below (Exhibit 9(b)):

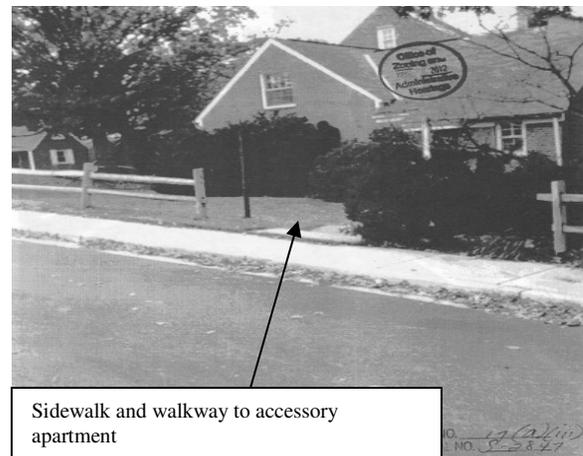
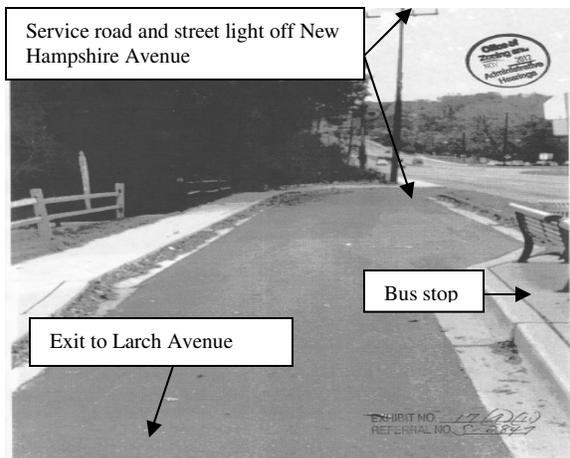


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<sup>7</sup> Petitioners estimated the accessory apartment to be approximately 740 square feet in their Statement in support of the Petition. Exhibit 3. However, given that Mr. Goff measured the unit during his inspection, Petitioners accepted Mr. Goff's finding that the accessory apartment is 1,024 square feet in size. Tr. 42-43.

Technical Staff reports that the accessory apartment has “direct access to on-street parking along a service drive on New Hampshire Avenue along its deep side yard property line.” Exhibit 18, p. 22. Petitioners testified that there is sufficient space to park four to five vehicles in front of the accessory apartment on the service road.<sup>8</sup>

As can be seen in the following photographs provided by Mr. Goff (Exhibit 17(a) (ii)-(iii)), a concrete island which is used as a bus stop protects and separates the service road from New Hampshire Avenue. Mr. Goff noted there are no parking restrictions on the service road which also provides an exit onto Larch Avenue. The service road is illuminated by a street light at its entrance from New Hampshire Avenue. Tr. 26 and 32.

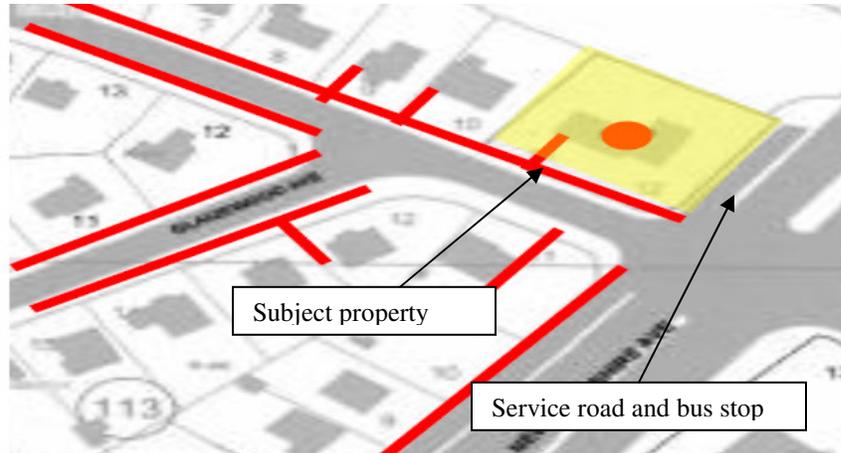


Technical Staff reports (Exhibit 18, p. 7):

Parking for the main dwelling and the accessory apartment can be accommodated with the two-parking spaces on the driveway, the garage, and with on-street parking on the north side of Larch Avenue. With parking permitted along the north side of Larch Avenue along the property frontage, the proposed special exception use will not have an adverse effect on parking in the area.

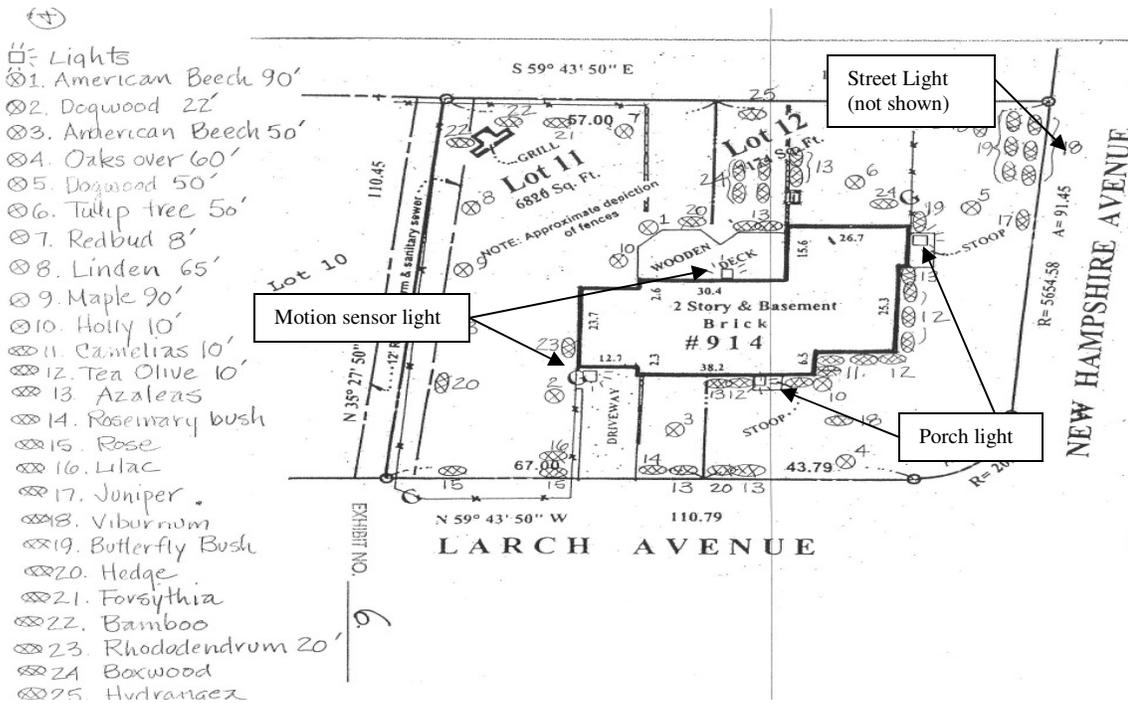
<sup>8</sup> Petitioners testified that they will provide a parking space for the accessory apartment on the driveway if needed. Petitioners believe it is unlikely the accessory apartment tenants will use the driveway when there is ample on-street parking directly in front of the accessory apartment and on the north side of Larch Avenue. Tr. 25-26.

Technical Staff provided a parking diagram, shown below, of the available parking on the driveway and in the neighborhood (Exhibit 18, p. 23):



The Hearing Examiner finds that there is sufficient parking on the property (driveway and garage) and on-street (along the north side of North Avenue and directly in front of the accessory apartment on the service road off New Hampshire Avenue) to accommodate the main dwelling and accessory apartment.

The Landscape and Lighting Plan, shown on the next page, reflects the location of the existing landscaping and lighting for the property (Exhibit 6). Petitioners identified motion sensor lights over the garage door and wooden deck at the rear of the dwelling. Porch light fixtures are located at the front door to the main dwelling and accessory apartment entrance. Technical Staff found: “The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 18, p. 16. Petitioners are not proposing any exterior changes to the dwelling or existing landscaping which Technical Staff found “falls within the standards expected for a typical one-family home.” Exhibit 18, p. 8.



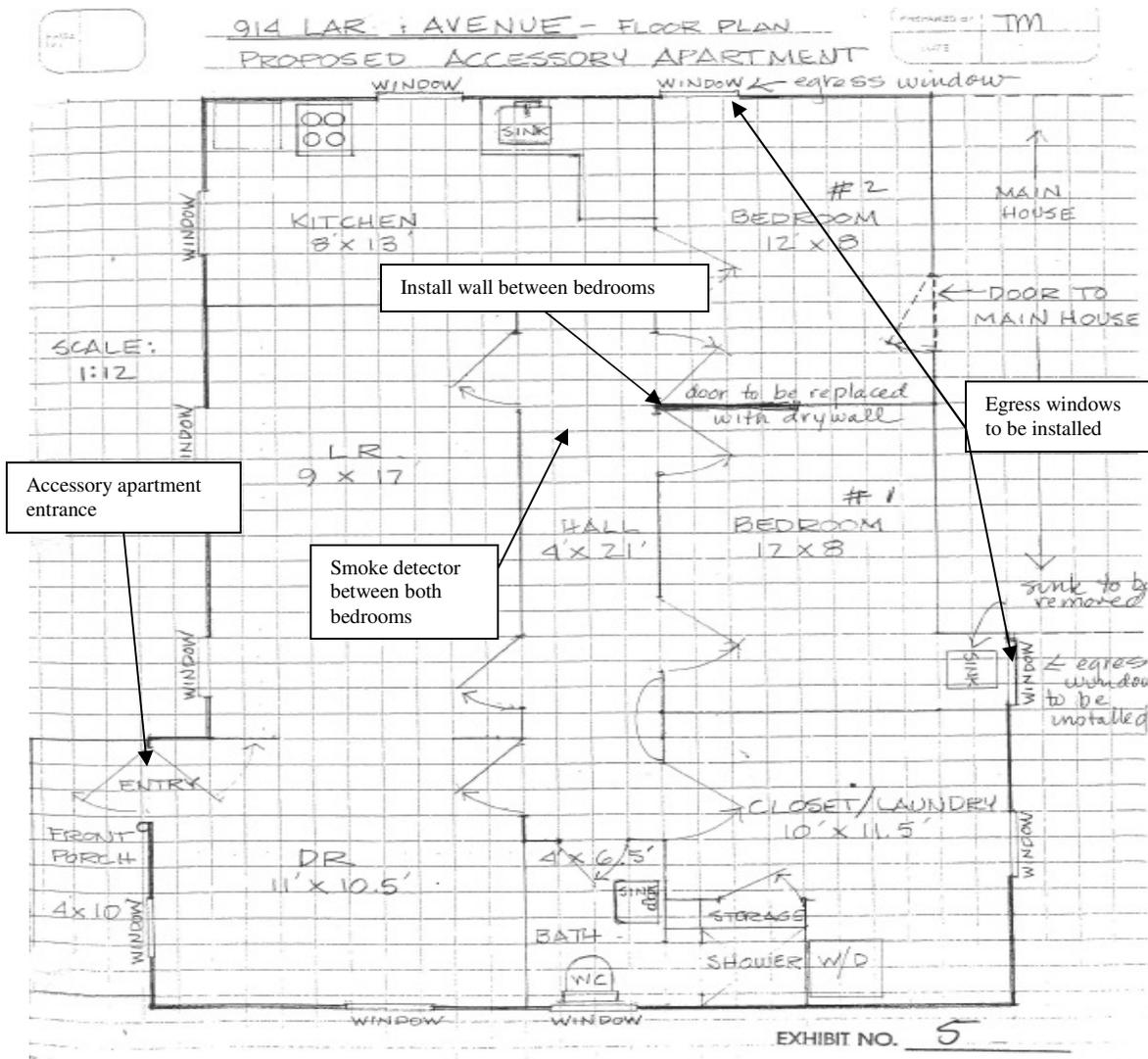
Mr. Goff inspected the property on October 16, 2012, and reported his findings in a memorandum dated October 19, 2012 (Exhibit 14). The substance of his report is set forth below:

The preliminary inspection was conducted on October 16, 2012. The Accessory Apartment is located in the main floor of the house. The issues regarding Accessory Apartment standards are as follows:

1. Install egress window in bedroom 2. Window must be at least 5 sq. feet opening.
2. Install wall between bedroom 1 and bedroom 2. Must have total separation between rooms.
3. Install new light fixture in bedroom 1.
4. Install egress window in bedroom 1. Window must be 5 [square] feet opening.
5. Remove sink and all plumbing pipes from bedroom 1 in front of window.
6. Remove keyed lock from storm door.
7. Install smoke detectors outside each bedroom.
8. Install full size stove/range in unit.
9. Install vent over stove/range to vent to the exterior.
10. Remove all keyed deadbolts from all [doors] in the Accessory Apartment.
11. Glaze bathroom sink.
12. Secure thermostat to wall.

- 13. There is 345 sq. feet of habitable space. The total [area] of the Accessory Apartment is 1024 [square feet]. 2 people can live in the unit or a family of 3.
- 14. The property has a driveway that can accommodate 3 cars.
- 15. There is off-street parking (No permit needed).

The accessory apartment's 345 square feet of habitable space includes two bedrooms, a kitchen, living room, dining room, full bath, and closet/laundry room area. The Floor Plan, as modified by Petitioners to identify the bedrooms and areas of repair consistent with Mr. Goff's preliminary inspection, is shown below (Exhibit 5):



During his testimony, Mr. Goff clarified that the existing door between the bedrooms must be removed and replaced with drywall to create a total separation between the two rooms (item no. 2). With regards to item number 5, Mr. Goff clarified that removing the sink and capping off the pipes within the wall is acceptable. He informed Petitioners that they only have to install one smoke detector provided it is located between the two bedrooms in the hallway (item no. 7). Tr. 48-49. Petitioners testified that they intend to replace and install new interior doors without keyed deadbolts (item no. 10). Tr. 50.

### **E. Traffic Impacts**

Technical Staff found that “the proposed special exception meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance.” Exhibit 18, p. 7.

Transportation Staff reported (Exhibit 18, pp. 25-26):

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 property 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 has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory

apartment satisfies the LATR and PAMR tests and will have no adverse impacts on the area roadways and pedestrian facilities. There being no evidence in the record to the contrary, the Hearing Examiner so finds.

#### **F. Environmental Impacts**

Petitioners do not propose any external changes to the site other than the enlargement of the bedroom windows required by DHCA. Technical Staff advises that the property is exempt from the Forest Conservation Law and there are “no environmental issues, constraints, or concerns associated with the applicant’s proposed accessory apartment.” Exhibit 18, p. 8. Based on this evidence, the Hearing Examiner finds that Petitioners’ request will have no adverse environmental impacts.

#### **G. Community Response**

There has been no response from the community, either positive or negative, to the subject petition.

### **III. SUMMARY OF THE HEARING**

Petitioners Jonathan Katz and Terri Moreland testified at the public hearing in support of the petition. DHCA Housing Code Inspector, Robert Goff, also testified as to compliance with the Housing Code. There was no opposition at the hearing.

#### **A. Petitioners’ Case**

##### Petitioners Jonathan Katz and Terri Moreland:

Petitioners adopted the findings and conclusions in the Technical Staff report (Exhibit 18) as their own evidence and agreed to comply with all the conditions set forth in the report. Petitioners agreed with the issues and repairs noted in Mr. Goff’s preliminary inspection report dated October 19, 2012 (Exhibit 14), and agreed to meet all the conditions set forth

therein. Tr. 7-8. They acknowledged they understood and agreed to comply with Mr. Goff's finding that occupancy is to be limited to no more than 2 unrelated people or a family of three based on a total habitable space of 345 square feet. Tr. 42-43. Petitioners executed an Affidavit of Posting (Exhibit 15) and agreed to submit the deed to their property after the hearing. Tr. 9.

Mr. Katz sought clarification on how to remove the lot line to comply with condition number 4 in the Technical Staff report. However, he questioned whether the condition was intended to be advisory since no modifications were being proposed to initiate the subdivision regulations. Based on a complete reading of the staff report, the Hearing Examiner believes Technical Staff intended the condition to be advisory since the two lots are considered and evaluated as one lot for zoning purposes. Tr. 11-14. Petitioners identified the Site Plan (Exhibit 4), Landscape and Lighting Plan (Exhibit 6), photographs of the premises (Exhibit 9 (a)-(b)), and the Floor Plan (Exhibit 5).

Mr. Katz confirmed that the measurements noted on the development chart in the Technical Staff report are accurate. He noted that the rear-yard setback, which is missing from the Site Plan (Exhibit 4), is approximately 37 feet as shown on the development chart in the Technical Staff report. Tr. 19-20. The front and side views of the home are shown in photographs in Exhibit 9(a)-(b). Tr. 30.

Ms. Moreland identified the existing landscape and lighting for the property as shown on the Landscape and Lighting Plan (Exhibit 6). She noted motion sensor lights over the garage and wooden deck in the rear and porch light fixtures at the front door to the main dwelling and accessory apartment entrance. Tr. 21-23. Access to the accessory apartment from the driveway is via the sidewalk on the north side of Larch Avenue and along the service

road on New Hampshire Avenue. There is a paved walkway from the sidewalk to the accessory apartment entrance. The proposed accessory apartment is located on the east side of the property which is level with the first floor of the main dwelling and not in the basement. The space was used by the former owner as a medical office. There is on-street parking (no permit required) for four to five cars directly in front of the accessory apartment on the service road located off of New Hampshire Avenue. Access to the service area is illuminated with a street light. Petitioners will provide a parking space on the driveway if needed. The on-street parking in front of the main dwelling along Larch Avenue can accommodate two to three vehicles. Tr. 24-.33.

Ms. Moreland modified the Floor Plan (Exhibit 5) to identify the location of the bedrooms and areas of repair consistent with the Mr. Goff's preliminary inspection report (Exhibit 14). Petitioners testified they will comply with and make all the required repairs noted in Mr. Goff's report. The kitchen existed when they purchased the property. They will replace and install a new stove that vents to the exterior. Tr. 34-37.

The second bedroom is located off the central hallway closest to the kitchen area. The interior door to the main dwelling is located in the second bedroom and is secure. The door between the two bedrooms will be removed and replaced with drywall for a wall that separates the two bedrooms. The sink in the first bedroom (formerly the doctor's office) will be removed and the pipes will be capped within the wall. Petitioners will install egress windows in both bedrooms. The bathroom sink will be glazed. The laundry room is equipped with a washer and dryer and closet space for storage. Tr. 38-42.

Petitioners are not proposing any exterior modifications to the dwelling. Petitioners will occupy the main dwelling and agree that occupancy of the accessory apartment is limited

to no more than two people or a family of three based on Mr. Goff's finding that there are 345 square feet of habitable space. Tr. 43-45. Mr. Katz indicated that based on a review of the property records on file with the City of Takoma Park, the prior owner lived in the office space (east wing) and rented out the main dwelling. Tr. 54. Petitioners confirmed they have resided in the main dwelling for 12 years. Petitioners have not received any comments from their neighbors regarding their Petition. Ms. Moreland noted that the accessory apartment faces New Hampshire Avenue and two churches to the east and a conservation area to the north (rear property line). Tr. 55.

### **B. Public Agency Testimony**

#### Housing Code Inspector Robert Goff:

Housing Code Inspector Robert Goff testified that he inspected the property on October 16, 2012, and reported his findings in a memorandum dated October 19, 2012 (Exhibit 14). He indicated that he would revisit the property after the hearing to take photographs of the existing parking and street light on the service road off of New Hampshire Avenue directly in front of the accessory apartment. Tr. 51.

Mr. Goff reviewed and confirmed the issues noted in his report with a few clarifications. First, he clarified that the existing door between the two bedrooms must be removed and replaced with drywall to create a total separation between the two rooms (item no. 2). With regards to item number 5, Mr. Goff clarified that removing the sink and capping off the pipes within the wall is acceptable. He informed Petitioners that they only have to install one smoke detector provided it is located between the two bedrooms in the hallway (item no. 7). He noted that all the keyed deadbolts to the interior doors had to be removed and the door knobs replaced (item no. 10). Tr. 45-49.

He confirmed that the accessory apartment is 1,024 square feet in size with 345 square feet of habitable space. Based on the habitable space, occupancy is limited to no more than two people or a family of three. Mr. Goff confirmed that the driveway can accommodate three parked vehicles and there are no parking restrictions for off-street parking in front of the main dwelling and on the service road in front of the accessory apartment entrance. Mr. Goff said he would submit photographs of the street light and available parking on the service road directly in front of the accessory apartment. He confirmed Technical Staff's finding that the accessory apartment entrance was a typical side entrance for a single-family home and the proposed accessory apartment use will not adversely impact the residential character of the neighborhood. Tr. 50-53.

#### **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, the use conforms to the applicable master plan, and the use 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 Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception if they comply with the recommended conditions. Exhibit 18.

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 characteristics of accessory apartments Exhibit 18, p. 12):

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 that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows (Exhibit 18, p. 13):

The accessory unit has a separate entrance apart from the main dwelling. The apartment entrance is typical of an auxiliary entrance to a main house, making it difficult to distinguish from any other neighborhood home. The walkway and grounds of the accessory apartment will be safe and illuminated consistent with typical residential standards.

Parking for the accessory apartment will be sufficient. There is room for two vehicles to park on the property's driveway and on the frontage of the property on Larch Avenue. There are adequate choices to ensure sufficient neighborhood parking even with the existence of an additional household on the block.

Based on these findings, Staff concluded (Exhibit 18, p. 13):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no adverse effects present in this case.

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concurs with Technical Staff and concludes that there are no non-inherent adverse effects from the proposed use.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report (Exhibit 18) and the Petitioners' 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 *Takoma Park Master Plan*, approved and adopted in December 2000. 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 *Takoma Park 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: The proposed special exception will be in harmony with the general character of the neighborhood. The accessory apartment is fully contained in the east wing of an existing dwelling with a separate entrance typical of an auxiliary side entrance for a one-family home. Occupancy will be limited to no more than two people or a family of three and therefore will have only minimal impact on population density and intensity of use. Thus, it will retain its residential character. There is adequate off-street parking (two spaces on the driveway and one in the garage) and ample on-street parking in front of the

accessory apartment and on the north side of Larch Avenue to accommodate the main dwelling and accessory apartment. The proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There are no accessory apartments or other special exceptions within 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 that the proposed use will not cause any objectionable noise, vibrations, fumes, odors, dust, or physical activity, “or objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 18, pp.15-16. The accessory apartment entrance and walkway will be

illuminated by a porch light and street light along New Hampshire Avenue. 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: Technical Staff found that there are no special exceptions located within the neighborhood boundary which consists of 60 single-family detached homes in the R-60 Zone. DHCA reported one accessory apartment located outside the neighborhood boundary at 1011 Elm Avenue (PG SE 3030) but this use was withdrawn in 1999 (Exhibit 14). Because the proposed use is a residential use by definition, the proposed special exception will not alter the predominantly residential nature of the area. As discussed in Part II.B. of this report, and for the reasons stated therein, 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 18, p. 17.

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. Exhibit 18, p. 17. 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: Based on the evidence of record, especially the availability of adequate parking and the limited number of additional trips generated by the special exception, the Hearing Examiner concurs with Technical Staff and finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic. Exhibit 18, p. 17.

### **C. Specific Standards**

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 18), 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 east wing 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 east wing 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 1948. Exhibit 12. 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: Petitioners will occupy the main dwelling. The use as proposed does not violate any of the provisions of this subsection. Also, a requirement that the occupancy of both the main house and the accessory apartment meet all Code requirements 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 entrance located on the east side of the dwelling. The entrance is typical of a side-entry door to a single-family home and is separate and distinct from the main dwelling entrance. Technical Staff found the accessory apartment entrance “preserves the appearance of a one-family dwelling.” Exhibit 18, p. 19. The Hearing Examiner concurs with Technical Staff’s conclusion and 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: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling, other than the installation of an egress window in each of the two bedrooms as required by DHCA (Exhibit 14). The Hearing Examiner finds that these minor changes, necessary for residential occupancy, will not affect the residential nature of the structure.

*(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: Based on the information Petitioners provided in their Statement in support of their Petition (Exhibit 3), Technical Staff reported that the accessory apartment is 740 square feet in size. The Housing Code Inspector reported that the accessory apartment is in fact 1,024 square feet in size and is under the maximum 1,200 square feet restriction. According to the Maryland tax records for the property (Exhibit 12), the total enclosed area for the dwelling (including the east wing) is 4,066 square feet. Thus, the Hearing Examiner finds, as did Technical Staff, that the 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 Petitioners 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 (Exhibit 16) submitted into the record, Petitioners purchased the property on July 20, 1999. 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 Petitioners 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: Petitioners submitted a deed dated July 20, 1999, evidencing joint ownership of the subject property (Exhibit 16). 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: As discussed in Part II.A of this report, Petitioners' property consists of two side by side lots: Lot 11 (interior lot) which is 6,820 square feet; and Lot 12 (corner lot) which is 7,174 square feet. The combined size of the property is 13,994 square feet and therefore satisfies this requirement.<sup>9</sup> A chart from the Technical Staff report, slightly modified by the Hearing Examiner to reflect the combined lot size and revised floor area of the accessory apartment from 740 square feet to 1,024 square feet, is shown below on the next page and demonstrates compliance with all development standards for the R-60 Zone (Exhibit 18, pp. 11-12):

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	1-2 stories	§ 59-C-1.327
Minimum Lot Area	6,000 sq. ft.	Lot 11 6,820 sq. ft. Lot 12 7,174 sq. ft. (Combined-13,994 sq. ft.)	§ 59-G-2.00(c)(1) § 59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	Larch Avenue Lot 11 65' Lot 12 65' New Hampshire Avenue Lot 12 110'	§ 59-C-1.322(b)

<sup>9</sup> For zoning purpose, Petitioners' property is treated as one lot because it consists of more than one record lot and the existing dwelling was constructed prior to October 1967.

Minimum Lot Width at Street Line	25 ft.	Larch Avenue Lot 11- 67' Lot 12 -43.79' New Hampshire Avenue Lot 12 -91.25'	§ 59-C-1.322(b)
Minimum Setback from Street	25 ft.	Larch Avenue 30' New Hampshire Avenue 27'	§ 59-C-1.323(a)
Minimum Rear Yard Setback	20 ft.	37'	§ 59-C-1.323(b) (2)
Setback from Property Line Side	8' Combined 18'	Between lots 0' Lot 11 west side – 35' Lot 12 east side – 27'	§ 59-C-1.323(b)(1)
Maximum Building Coverage	30 percent	14 percent	§ 59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	1,024 sq. ft.	§ 59-G-2.00(a)(9)
Parking	4 total	2 in driveway 1 in garage 1 on-street	§ 59-G-2.00(c)(b)

(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: Technical Staff found that there are no special exceptions located within the neighborhood boundary which consists of 60 single-family detached homes in the R-60 Zone. DHCA reported one accessory apartment located outside the neighborhood boundary at 1011 Elm Avenue (PG SE 3030) but this use was withdrawn in 1999 (Exhibit 14). The Hearing Examiner finds, as did Technical

Staff, that the proposed special exception will not result in an excessive concentration of similar uses in the general neighborhood.

*(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 ample on-street parking on the north side of Larch Avenue and on the service road in front of the accessory apartment 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 14) notes certain issues and recommends that occupation of the accessory apartment be limited to no more than two (2) unrelated persons or a family of three. As mentioned above, Petitioners have agreed to meet all conditions, including making the repairs required by the Housing Code Inspector.

## V. RECOMMENDATION

Based on the foregoing analysis, the Hearing Examiner recommends that the Petition of Jonathan Katz and Terri Moreland, BOA No. S-2847, which seeks a special exception for an accessory apartment to be located at 914 Larch Avenue, Takoma Park, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 14):
  - a. Install an egress window in bedroom number 1 and bedroom number 2. Each window must be at least 5 sq. feet opening.
  - b. Remove existing door between bedroom number 1 and 2. Install a wall between bedroom 1 and bedroom 2. There must be a total separation between rooms.
  - c. Install new light fixture in bedroom 1.
  - d. Remove sink and all plumbing pipes from bedroom 1 in front of window. Plumbing pipes can be capped inside the wall.
  - e. Remove keyed lock from storm door.
  - f. Install one smoke detector between the each bedroom in the middle of the hallway.
  - g. Install full size stove/range in the unit.
  - h. Install vent over stove/range to vent to the exterior.
  - i. Remove all keyed deadbolts from all doors in the Accessory Apartment.
  - j. Glaze bathroom sink.
  - k. Secure thermostat to wall.
  - l. The Accessory Apartment is 1,024 square feet in size with 345 square feet of habitable space. As a result, two (2) unrelated persons or no more than a family of three (3) can occupy the Accessory Apartment;
3. The Petitioners must comply with the conditions set forth in the Technical Staff report (Exhibit 18);
4. The Petitioners 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. The Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
7. The Petitioners 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. Petitioners 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 27, 2012

Respectfully submitted,

  
Tammy J. CitaraManis  
Hearing Examiner