

**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:	*	
JOSE R. REYES	*	
	*	Board of Appeals No. S-2856
Petitioner	*	(OZAH No. 13-05)
Jose R. Reyes (with the assistance	*	
of Mr. Luis Moreno) ¹	*	
For the Petition	*	

Robert Goff	*	
Department of Housing and	*	
Community Affairs	*	

Before: Tammy J. CitaraManis, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION
TABLE OF CONTENTS**

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND	4
A. The Subject Property and Its Current Use	4
B. The Surrounding Neighborhood.....	7
C. The Master Plan	8
D. The Proposed Use	9
E. Traffic Impacts	14
F. Environmental Impacts.....	14
G. Community Response	15
III. SUMMARY OF THE HEARING	15
A. Petitioner's Case	15
B. Public Agency Testimony	18
IV. FINDINGS AND CONCLUSIONS	19
A. Standard for Evaluation	20
B. General Standards	22
C. Specific Standards	28
D. Additional Applicable Standards	35
V. RECOMMENDATION	36

¹ Mr. Moreno appeared at the hearing to provide Petitioner with limited assistance with translation if needed.
Tr. 4.

I. STATEMENT OF THE CASE

In Petition No. S-2856, Petitioner, Jose R. Reyes, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 11125 Nicholas Drive, Silver Spring, Maryland, in the R-90 (Residential, One-family, Detached) Zone.² The legal description of the property is Lot 1, Block 7, in the Parkway Subdivision. The tax account number is 01367960.

On August 9, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for January 10, 2013. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated January 3, 2013, recommended approval of the special exception, with five (5) conditions.³ Exhibit 15.

The Department of Housing and Community Affairs (DHCA) inspected the property on December 18, 2012. Housing Code Inspector Robert Goff (Mr. Goff) reported his findings in a memorandum dated December 26, 2012. Exhibit 13. Mr. Goff reported that the accessory apartment is 972.98 square feet in size with 558.94 square feet of habitable space.⁴ Based on the habitable space, he concluded that occupancy must be limited to a family of three or two unrelated persons. Mr. Goff submitted an Addendum (Exhibit 23) to his report dated January 25, 2013, confirming Petitioner's testimony that the unit will only have two bedrooms and not three as originally proposed on the Floor Plan (Exhibit 5) submitted with the Petition. Tr.27-28. In an e-mail to the Hearing Examiner dated January 25, 2013, Mr. Goff clarified that the decrease in

² Petitioner testified that the property is jointly owned and occupied with his brother, Silder Antonio Reyes, who was not present at the hearing and did not sign the Petition for Accessory Apartment Special Exception (Exhibit 1). Tr. 9-10. Mr. Goff submitted a copy of the first page of the deed to the property from county records which confirmed Petitioner's joint ownership with his brother (Exhibit 22). Tr. 15-16.

³ The Technical Staff report is frequently quoted and paraphrased herein.

⁴ Technical Staff relied on Petitioner's measurements that the accessory apartment was 970 square feet in size. Exhibits 3 and 15.

the number of bedrooms in the unit will not change the habitable space and occupancy limitations noted in his December 18, 2012, inspection report. Exhibit 24.

DHCA submitted a memorandum dated December 21, 2012, from Ada DeJesus, Licensing and Registration Unit, reporting one accessory apartment (BAS-1966) and one registered living unit (RLU) in the direct vicinity of Petitioner's property. Exhibit 14.

The hearing went forward as scheduled on January 10, 2013, and Petitioner, Jose R. Reyes, appeared *pro se*. Petitioner's realtor, Mr. Luis Moreno, was also present to provide Petitioner with limited assistance with translation when needed.⁵ Petitioner testified in support of the petition and adopted the findings in the Technical Staff Report (Exhibit 15) and the Housing Code Inspector's Report (Exhibit 13) as his own evidence and agreed to meet all the conditions set forth in both reports. Tr. 14-20.

During the hearing, Petitioner submitted a modified Floor Plan (Exhibit 18) which identified two bedrooms and the location of the egress windows to be installed in each bedroom as required by DHCA. Tr. 28. Petitioner modified the Site Plan (Exhibit 4) and Landscape and Lighting Plan (Exhibit 6) to show the location of the stone pathway from the driveway to the accessory apartment entrance located in the southwest corner of the dwelling. Petitioner executed an Affidavit of Posting (Exhibit 17). The Housing Code Inspector, Robert Goff, also testified. No opposition appeared at the hearing.

The record was held open until January 25, 2013, to give Petitioner time to submit a copy of his deed to the property and a signed Affidavit from his brother, Silder Antonio Reyes, co-owner of the property, consenting to the Petition and agreeing to be bound by all conditions of

⁵ Petitioner and Mr. Moreno were sworn in and Petitioner testified in English with limited assistance from Mr. Moreno who did not testify. Mr. Moreno's limited assistance translating on Petitioner's behalf is noted in the transcript. (See transcript index, page 4, for a complete list of transcript page numbers referencing Mr. Moreno's assistance on Petitioner's behalf).

approval if the special exception request is granted (Exhibits 20 and 21). It also allowed time for the Court Reporter to complete the hearing transcript and the Housing Code Inspector to submit an Addendum (Exhibit 23) to his report confirming Petitioner’s testimony that the unit will only have two bedrooms as shown on the modified Floor Plan (Exhibit 18).

The record closed as scheduled with no further documents other than the Affidavit of Silder Reyes (Exhibit 20), Deed of Trust to the property (Exhibit 22), an Addendum (Exhibit 23) and e-mail correspondence dated January 25, 2013, from the Housing Code Inspector (Exhibit 24), and the transcript 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

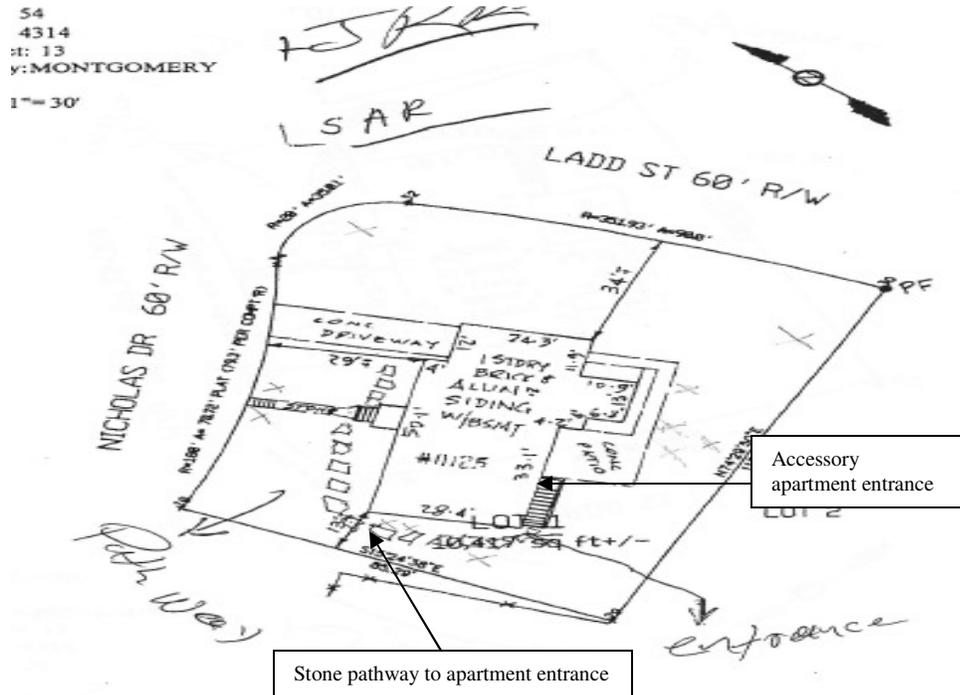
The subject property is located at 11125 Nicholas Drive, Silver Spring, Maryland, in the Parkway Subdivision. It is zoned R-90. The property is a 10,417 square foot corner lot located on the southwest corner of Nicholas Drive and Ladd Street and west of Vivian Place, as shown below on a Zoning Map of the area (Exhibit 10):



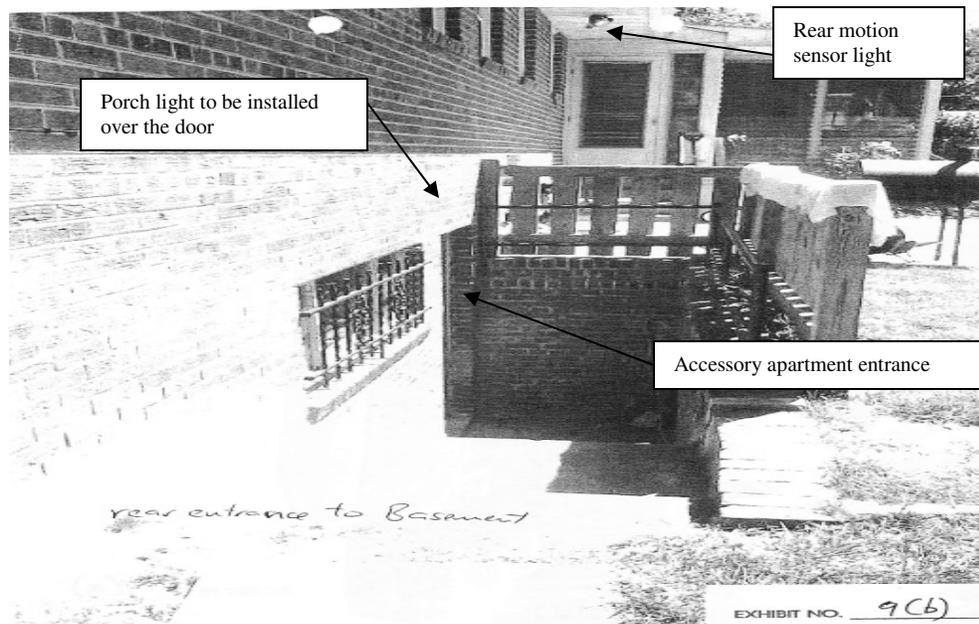
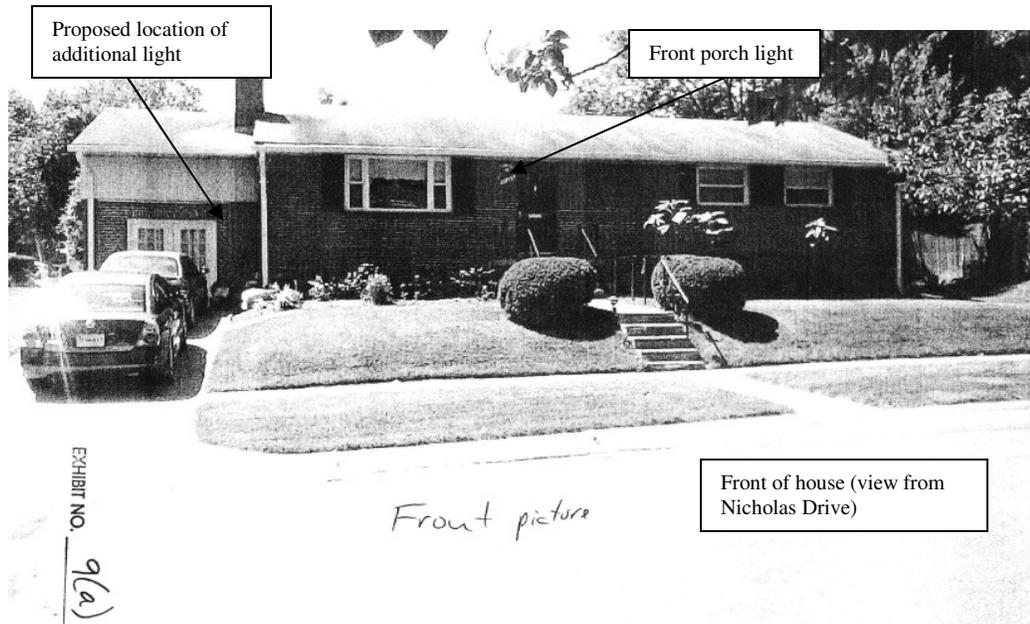
The lot is improved with a one-story single-family dwelling with a basement. According to the Maryland Department of Taxation and Assessment records (SDAT) for the property the dwelling was built in 1957 with an enclosed area of 1,400 square feet, excluding the basement. Exhibit 16. Vehicular access to the property is via a driveway from Nicholas Drive which Technical Staff reports can accommodate two parked vehicles with ample on-street parking available on Nicholas Drive and Ladd Street. Exhibit 15, p. 2.

A concrete walkway and steps from the public sidewalk on Nicholas Drive provides pedestrian access to the main dwelling entrance which is illuminated with a porch light. A stone pathway from the driveway also provides pedestrian access to the main dwelling entrance and continues along the front and side of the dwelling to the exterior steps leading down to the accessory apartment entrance located in the southwest rear corner of the dwelling. Exhibit 15.

The Site Plan, modified to show the location of the stone pathway to the accessory apartment entrance, is shown below (Exhibit 18):



Technical Staff reported that the existing landscaping, which includes bushes bordering the house and a variety of trees which are mostly located in the back yard, is well-maintained. Exhibit 15, p. 2. Petitioner provided the following photographs of the front and rear views of the dwelling (Exhibits 9(a) and (b)):



B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood, which consists of approximately 84 one-family detached homes in the R-90 Zone, as bound by Eascrest Drive to the northwest, Ladd Street to the northeast, Inwood Avenue to the southeast, and Constance Street to the southwest. Exhibit 15, p. 2. 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 15, p. 3), 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 reports one accessory apartment special exception (BAS 1966) is located across the street from Petitioner's home at 11122 Nicholas Drive. Exhibit 15, p. 3. DHCA

reported that the Board of Appeals revoked the special exception for an accessory apartment at this location on or about June 15, 2011. DHCA also reported there was one active RLU in the neighborhood located at 1603 Ladd Street. Exhibit 14.

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 *Master Plan for the Communities of Kensington-Wheaton*, approved and adopted in April 1989 (Amended 1990). Technical Staff advises that there are no Master Plan recommendations relevant to this site. However, Technical Staff found the proposed accessory apartment was consistent with the following Land Use and Zoning Goals and objectives stated on page 28 of the Master Plan: 1) to protect and stabilize the extent, location, and character of existing residential and commercial land uses; and 2) to maintain the well established low-to medium-density residential character which prevails over most of the planning area. Exhibit 8.

The Hearing Examiner concurs with Technical Staff because the Master Plan supports the R-90 zoning in which accessory apartments are a special exception use. In addition, the accessory apartment entrance is not visible from the street and is consistent with a rear entrance into a basement of a single-family dwelling. With the exception of the enlargement of the two bedroom windows required for emergency fire escape and additional exterior lighting to illuminate the pathway and rear entrance to the accessory apartment entrance, no other structural modifications or changes to the property are necessary to accommodate this special exception use. Thus, the single-family dwelling 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 *Master Plan for the Communities of Kensington-Wheaton*.

D. The Proposed Use

The Petitioner is seeking a special exception to allow a 972.98 square-foot accessory apartment located in the basement of his existing one-story home. An existing stone pathway from the driveway along the front and side of the dwelling provides pedestrian access to the accessory apartment located in the rear southwest corner of the dwelling. The accessory apartment entrance is located at the bottom of an open brick stairwell surrounded on two sides with a metal railing that is screened by a wooden (open slates) board-on-board fence.⁶

Petitioner testified that there is no exterior access or a “main entrance” to the accessory apartment located at the end of the driveway (northeast front corner of the house) as noted in the Technical Staff report (Exhibit 15, pp. 2 and 11). He clarified that the only exterior entrance to the accessory apartment is located in the rear of the dwelling. Tr. 24-26. The Hearing Examiner finds that the accessory apartment entrance is typical of a rear-entry into a basement level of a single-family dwelling and therefore is compatible with the residential character a single-family dwelling and the surrounding neighborhood.

The existing exterior lighting on the dwelling includes a porch light at the front door to the main dwelling and a motion sensor fixture located on the rear of the dwelling over the concrete patio which is between the enclosed porch and stairwell to the accessory apartment

⁶ Petitioner testified that the bars on the window to the left of the accessory apartment entrance as shown on a photograph (Exhibit 9(b)), previously shown on page 6 of this report, have been removed as required by the Housing Code Inspector. Tr. 40 and 47.

illuminate the pathway to the accessory apartment entrance in the rear southwest corner of the house. Exhibit 15, p. 2. While there is no exterior access or “main entrance” to the accessory apartment at the end of the driveway, the Hearing Examiner nonetheless concurs with Technical Staff’s recommendation for additional standard residential lighting at this location to illuminate the driveway connection to the stone pathway along the front of the dwelling. The front porch light will illuminate the pathway to the side of the house.

Mr. Goff recommended that Petitioner install a separate porch light over the accessory apartment entrance and concurred with Technical Staff’s recommendation for additional standard residential lighting on the southwest side of the house to illuminate the pathway to the accessory apartment entrance. Mr. Goff advised Petitioner that low voltage ground lighting (i.e., solar garden lights) along the stone pathway would be an acceptable alternative to installing an exterior (motion sensor) light fixture on the side of dwelling. Tr. 55.

Based on this evidence, the Hearing Examiner finds that the pathway and entrance to the accessory apartment will be safe and illuminated with standard residential lighting which will be compatible with the dwelling and surrounding neighborhood as long as Petitioner complies with the recommended conditions set forth in Part V, below. Exhibit 15, p. 9.

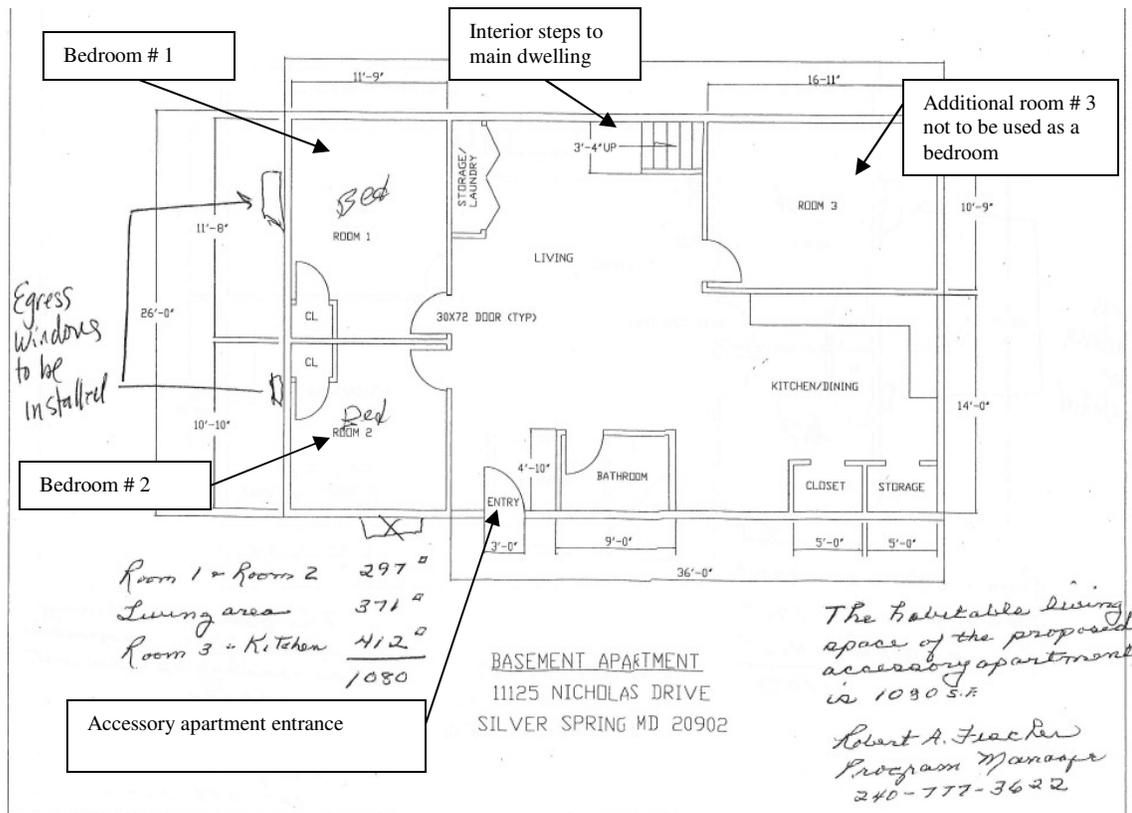
Technical Staff advises that no exterior modifications are proposed and the accessory apartment will be fully contained within the basement of the existing dwelling.

Technical Staff reports (Exhibit 15, p. 2):

The [Petitioner] has owned the property for three years. Currently, the construction of the apartment is incomplete. The [a]partment will include two bedrooms, an additional room, a laundry room, a kitchen, a bathroom, a living room and dining room area, and closet and storage space. The apartment will not have parking spaces on the property but there is ample on-street parking available on both Nicholas Drive and Ladd Street.

The Floor Plan for the accessory apartment (Exhibit 18), modified by Petitioner to show

the location of the two bedrooms and egress windows to be installed, is shown below:



DHCA inspected the property on December 18, 2012. Housing Code Inspector Robert Goff reported his findings in a memorandum dated December 26, 2012 (Exhibit 13). The substance of his report is set forth below:

The Preliminary inspection was conducted on December 18, 2012. The Accessory Apartment is located in the cellar of the house. The issues regarding the Accessory Apartment standards are as follows:

1. Bedroom 1, Install egress window no more than 44" from floor to window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24" and a minimum width of 20".
2. Bedroom 2, Install egress window no more than 44" from floor to window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24" and a minimum width of 20".
3. Bedroom 3, Install egress window no more than 44" from floor to

window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24” and a minimum width of 20”.

4. Install adequate heat source to bedrooms 2 and 3.
5. Install range/stove in kitchen.
6. Bulkhead in living room and kitchen must be moved up to 78” from floor.
7. Install light over door to the accessory apartment.
8. Install lighting on right side of house to light the walkway to the accessory apartment.
9. All work must have approved permits.
10. The driveway will accommodate 2 cars.
11. There is [on]-street parking (No permit needed).
12. There is 558.94 square feet of habitable space. The total [square] feet of the accessory apartment is 972.98 square feet. [Two] unrelated people can live in the unit or a family of 3.

Mr. Goff amended his report in an Addendum dated January 25, 2013, confirming Petitioner’s testimony decreasing the number of bedrooms from three to two as shown on the modified Floor Plan (Exhibit 18). Mr. Goff noted that as a result, “the room on the North East corner of the basement located in the right rear will not be used for sleeping due to [the] lack of emergency egress. No sleeping is permitted in this room unless an egress window is installed.” Exhibit 23. Mr. Goff also confirmed that the habitable space and occupancy limits noted in his initial report will not change. Thus, occupancy will be limited to no more than two (2) unrelated persons or a family of three. Exhibits 13 and 24. Tr. 35.

Technical Staff found (Exhibit 15, p. 8):

The proposed special exception meets the parking requirements of Article 59-E. The code normally requires two off-street spaces for an accessory apartment but allows for fewer spaces if there is adequate on-street parking. The driveway can accommodate two off-street parking spaces reserved for the homeowner. However, there is adequate on-street parking on both Nicholas Drive and Ladd Street. Therefore, adequate parking exists for the proposed accessory apartment.

Petitioner testified that he has three vehicles and that there is space for at least three vehicles to park in front of his house. Tr. 45-46. The Hearing Examiner concurs with Technical

Staff's finding that there is adequate parking on the driveway and ample on-street parking to accommodate the main dwelling and accessory apartment use.

E. Traffic Impacts

Based on a report from Transportation Staff, Technical Staff found that “[t]he proposed special exception meets all transportation-related requirements . . . and satisfies the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) tests[.]” Exhibit 15, p. 3.

Transportation Staff reported (Exhibit 15, Attachment 1, p. 1):

Adequate Public Transportation Facilities Review

The proposed accessory apartment will generate one additional peak-hour vehicular trip each within the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.) (two trips total). A traffic study is not required to satisfy the (LATR) because the proposed land use generates fewer than the 30 peak-hour trips within the weekday morning and evening peak periods.

The PAMR test requires a development located in the Kensington/Wheaton Policy Area to mitigate 10% of its new trips if it generates three or more peak hour trips. PAMR mitigation is not required for the proposed accessory apartment because it generates fewer than three peak-hour trips.

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 15, p. 3.

F. Environmental Impacts

Petitioner is not proposing any external changes to the site, other than to enlarge the two bedroom windows to comply with County requirement for adequate fire escape. Technical Staff advises that although “[t]he property is within the Sligo Creek watershed – a Use I watershed[,] [t]he proposed project does not have any proposed activities within any

streams, wetlands, or environmental buffers and is in compliance with the Environmental Guidelines.” Exhibit 15, p. 4. The property is also exempt from the Forest Conservation Law (Exhibit 7). 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 Jose R. Reyes testified at the public hearing in support of the petition. Mr. Luis Moreno was present at the hearing and did not testify as a witness. Mr. Moreno provided Petitioner with limited assistance translating his testimony when needed. DHCA Housing Code Inspector, Robert Goff, also testified. There was no opposition at the hearing.

A. Petitioner’s Case

Petitioner Jose R. Reyes (with assistance from Luis Moreno):

Petitioner’s realtor, Mr. Luis Moreno, was present at the hearing to assist Petitioner and did not testify as a witness. Petitioner indicated that he understood the proceedings. Tr. 4-7. He executed an Affidavit of Posting (Exhibit 17) and promised to submit a copy of the deed to his property as well as a signed Affidavit from his brother and co-owner, Silder Antonio Reyes, consenting to the Petition and agreeing to be bound by the conditions of approval if the special exception is granted. Petitioner testified that he and his brother occupy the main dwelling. Tr. 8-10.

Petitioner submitted another copy of his Floor Plan which included handwritten notations by DHCA Program Manager, Bob Fischer. He confirmed that with the exception of Mr. Fischer’s handwriting, Exhibit 18 is the same Floor Plan he submitted with his application (Exhibit 5).

Petitioner elected to modify Exhibit 18 to identify the two bedrooms and the location of the egress windows to be installed. Tr. 11.

Petitioner indicated that he did not receive a copy of the Technical Staff report prior to the hearing. A brief recess was taken to give Petitioner an opportunity to review the Staff report with Mr. Moreno. Tr. 12-14. After the recess, Petitioner indicated that he reviewed and understood the findings and conditions set out in the Staff report. Petitioner adopted the findings and conclusions in the Staff report as his own evidence and agreed to be bound by the conditions of approval stated therein. Tr. 15-18.

Petitioner testified that he was present when Mr. Goff inspected the property on December 18, 2012, and had reviewed his preliminary inspection report dated December 26, 2012 (Exhibit 13). Petitioner agreed to abide by all the conditions and issues identified in the inspection report. Tr. 19-20.

Petitioner revised the Site Plan (Exhibit 4) to show the location of the stone pathway to the accessory apartment entrance located in southwest rear corner of the house. Petitioner clarified that this is the only exterior entrance into the accessory apartment and that there is not a “main entrance” or second exterior entrance located at the end of the driveway as noted in the Technical Staff report. The “x” marks noted on the Site Plan are the general location of existing trees and bushes on the property. Tr. 23-26.

Petitioner testified that the accessory apartment will only have two bedrooms instead of three as he originally intended. He modified the Floor Plan (Exhibit 18) to identify the location of the two bedrooms and egress windows to be installed. Mr. Goff advised Petitioner that only one window per room needs to be enlarged in order for the room to be used as a bedroom. He noted that bedroom number 2 has two windows and only one has to be enlarged. Petitioner decided not

to include “room 3” as a bedroom because it also required the installation of an additional egress window. Petitioner indicated that he understood that his rental license will exempt use of this room (#3) as a bedroom for sleeping if it does not have an egress window. The interior access door from the accessory apartment to the main dwelling is secure. Tr. 27-32.

Petitioner identified the Landscape and Lighting Plan (Exhibit 6) which he revised to show the stone pathway and rear entrance to the accessory apartment. He confirmed that the two existing light fixtures (e.g., front porch light and rear motion sensor light over the concrete patio area) use 200 watt bulbs which Mr. Goff advised was not consistent with the residential character of the dwelling or neighborhood. Petitioner agreed to replace the bulbs with standard residential light bulbs that are 100 watts or less. Petitioner also agreed to comply with the recommendations from Technical Staff and DHCA to install standard residential lighting at the end of the driveway, along the pathway to the accessory apartment entrance (southwest side of house), and over the rear accessory apartment entrance. (Mr. Goff identified the location of the accessory apartment porch light as “light over entrance” on the Landscape and Lighting Plan.) Tr. 34-39.

Petitioner testified that the photographs marked as Exhibits 9(a) and 9(b) accurately depict the front and rear views of his property. He indicated that the photographs were taken seven to eight months before the hearing. He indicated that Exhibit 9(b) shows the rear entrance to the accessory apartment. He further noted that the bars on the window to the left of the entrance have since been removed as required by the Housing Code Inspector. Tr. 39-40.

Petitioner indicated he understood he was required to 1) install a heat source in room number 2 and 3; 2) install a stove/range in the kitchen; and 3) to raise the bulkhead in the living room and kitchen up to 78” from the floor as noted in Mr. Goff’s inspection report (Exhibit 13). Petitioner, with the assistance of Mr. Moreno, explained that there were cables in the ceiling

which he needed to relocate to raise the bulkhead. Petitioner was advised and indicated that he understood that he would have to obtain the necessary permits to enlarge the windows, install additional exterior lighting and provide a heat source in the rooms noted Mr. Goff's inspection report. Petitioner confirmed there are no on-street parking restrictions. He indicated there is enough space to park at least three vehicles in front of his house. He has three vehicles. Tr. 42-46 and 49-50.

Petitioner confirmed that he had to take down the sign in his yard during the hurricane in early November 2012 which Technical Staff noted in an e-mail to Ms. Forbes (Exhibit 12). Petitioner testified he put the sign back in his front yard shortly after the storm. He was advised that the sign must remain posted until after he receives the final decision from the Board. Tr. 51-52.

B. Public Agency Testimony

Housing Code Inspector Robert Goff:

Housing Code Inspector Robert Goff testified that he inspected the property on December 18, 2012, and reported his findings in a memorandum dated December 26, 2012. Exhibit 13. He reiterated that the bars on the window next to the accessory apartment door as shown in Exhibit 9(b) must be removed and "room #3" shown on the Floor Plan (Exhibit 18) cannot be used as a bedroom. He also clarified that bulkhead (ceiling) in the living room and kitchen is currently 75" from the floor and must be raised to 78" from the floor. He noted there two parking spaces on the driveway and unrestricted on-street parking in front of Petitioner's house. He confirmed that the accessory apartment entrance is located in the rear of the house and is not visible from the street. It was Mr. Goff's opinion that the accessory apartment will not have a negative effect on the residential character of the neighborhood. Tr. 47-49.

Mr. Goff advised Petitioner to wait for a final decision from the Board of Appeals before making any of the required repairs to the accessory apartment. Mr. Goff also advised Petitioner that he would be required to obtain the necessary permits from the Department of Permitting Services to complete the work. Petitioner will contact Mr. Goff to complete a final inspection. Tr. 50-51.

Referring to the revised Floor Plan (Exhibit 18), Mr. Goff explained that Mr. Fischer estimated the size of the accessory apartment as approximately 1080 square feet based on measurements provided by the Petitioner. However, Mr. Goff clarified that the final measurements and habitable space is determined when he measures the unit during his preliminary inspection and noted in his report (Exhibit 13). He also clarified that Petitioner can install low-voltage ground lights along the pathway to the accessory apartment entrance in the rear of the dwelling as an alternative to installing a light fixture (motion sensor) to the south side of the house. Tr. 53-55.

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 he complies with the recommended conditions. Exhibit 15.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use as long as Petitioner complies with the 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 15, p. 5):

- (1) The existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit;
- (2) The provision within the apartment of the necessary facilities, spaces and floor area to qualify as habitable space under the Building Code;
- (3) Provision of a separate entrance and walkway and sufficient lighting;
- (4) Provision of sufficient parking;
- (5) The existence of an additional household on the site; and
- (6) Additional activity from that household, including 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 (Exhibit 15, p. 5):

. . . that the size, scale, and scope of the requested use are minimal, and that any noise, traffic, neighborhood disruption, or environmental impacts associated with the use would be slight. There are no unusual characteristics of the site. Staff concludes that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial.

The accessory apartment will be fully contained in the basement-level of an existing single-family dwelling with its own separate exterior entrance located on the southwest rear corner of the dwelling. The apartment entrance is typical of a rear-entry into a basement level of a single-family dwelling, and is not visible from the street. Thus, the residential

appearance of the single-family dwelling is maintained and compatible with the surrounding neighborhood. There is space for two vehicles on the driveway and ample off-street parking in front of the dwelling to accommodate the main dwelling and accessory apartment use. Occupancy will be limited to no more than two unrelated individuals or a family of three.

Based on these circumstances, and considering size, scale, light, traffic and environment, the Hearing Examiner agrees with Technical Staff and 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-90 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 IV. 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 *Master Plan for the Communities of Kensington-Wheaton*, approved and adopted in 1989 (Amended 1990). Exhibit 8. 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-90 zone, is consistent with the goals and objectives of the *Master Plan for the Communities of Kensington-Wheaton*.

- (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 accessory apartment is fully contained in the basement of an existing dwelling with a separate entrance typical of a rear-entrance to a basement for a one-family home. The entrance is not visible from the street. The only exterior modifications proposed are the enlargement of the accessory apartment bedroom windows required by DHCA (Exhibit 13) and necessary for habitation and the addition of

standard residential lighting at the end of the driveway, side of the house and over the accessory apartment entrance. It therefore will maintain its residential character. There is sufficient off-street and on-street parking to accommodate the main dwelling and accessory apartment use. 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. Based on a combined reading of the reports from Technical Staff (Exhibit 15) and DHCA (Exhibit 14) there is one RLU and one accessory apartment (BAS 1966 –revoked June 15, 2011) in the 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 with Technical Staff 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 adverse effects “because there are no exterior renovations proposed and the accessory apartment is completely contained within the existing single-family house.” Exhibit 15, p. 6. As a condition of approval, Petitioner will add standard exterior residential lighting to at the end of the driveway, on the side of the house and over the accessory apartment door. Petitioner agreed to replace the existing 200 watt bulbs in the front and rear exterior light fixtures noted on the Landscape and Lighting Plan (Exhibit 6) with standard residential light bulbs that are 100 watts or lower. The Hearing Examiner finds that the addition of standard residential light fixtures will be compatible and consistent with residential character of the single-family dwelling and neighborhood and will cause no objectionable illumination or glare at the subject site. Since the use will be indoors and residential, the Hearing Examiner also 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 15) and DHCA (Exhibit 14), there is one special exception accessory apartment use (BAS 1966) and one RLU within the staff-defined neighborhood. Because the proposed use is a residential use by definition, and permitted by special exception in the R-90 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 the proposed special exception use at the subject site will be adequately served by existing public services and facilities. Exhibit 15, p. 7. The Hearing Examiner finds that the evidence of record 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, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. 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 (two total trips). 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. As noted by Transportation Staff, “[t]he PAMR test requires a development located in the Kensington/Wheaton Policy Area to mitigate 10% of its new trips if it generates three or more peak hours. PAMR mitigation is not required for the proposed accessory apartment because it generates fewer than three new peak-hour trips.” Exhibit 15, Attachment 1, p. 2. 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 proposed use “will have no adverse impact on area roadways or nearby pedestrian facilities.” Exhibit 15, p. 3. Based on the evidence of record, especially the availability of adequate on-street parking and the limited number of additional trips generated by the special exception use, 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 15), 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 with the main dwelling, 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 1957. Exhibit 16. It therefore meets the “5 year old” requirement.

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

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

Conclusion: The 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 entrance located in the rear southwest corner of the dwelling. The entrance is distinct and separate from the main dwelling entrance. The Hearing Examiner finds that the existing accessory apartment entrance is typical of a rear-entry door into a basement level of a single-family home and is not visible from the street. 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 two bedrooms required by DHCA and necessary for habitation and additional standard residential exterior lighting as previously discussed in

Part II.D of this report. Technical Staff found that “a standard residential lighting fixture would be compatible with the neighborhood.” Exhibit 15, p. 9. The Hearing Examiner agrees with Technical Staff and finds that the minor external modifications and proposed addition of standard residential lighting fixtures at the end of the driveway, side of the house and over the accessory apartment entrance will be compatible with the existing dwelling and surrounding properties provided the Petitioner complies with the recommended conditions set forth in Part V, below.

- (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 Petitioner provided in his Statement in support of the Petition (Exhibit 3), Technical Staff reported that the accessory apartment is 970 square feet in size. The Housing Code Inspector measured the unit during the preliminary inspection on December 18, 2012, and determined that the accessory apartment is actually 972.98 square feet in size, 558.94 square feet of which is habitable space. Exhibit 13. Thus, it is well below the 1,200 square foot maximum for an accessory apartment. According to the SDAT records (Exhibit 16) for the property, the enclosed floor area for the one-story home (excluding the basement)

is 1,400 square feet. Technical Staff estimated the total enclosed area for the dwelling (including the basement) to be approximately 2,800 square feet. Exhibit 15, p. 11. 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 Petitioner's deed (Exhibit 22) and Deed of Trust (Exhibit 21) Petitioner and his brother, Silder Antonio Reyes, share joint ownership of the property purchased on June 30, 2009. The deed and Deed of Trust were recorded July 22, 2009. 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 the 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: The deed (Exhibit 22) and Deed of Trust (Exhibit 21) submitted into the record reflects that Petitioner and his brother, Silder Antonio Reyes, share joint ownership of the subject property. Petitioner submitted a signed Affidavit from his brother affirming his joint ownership of the property. Exhibit 20. 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 property is in the R-90 Zone which permits an accessory apartment as a special exception use. The minimum lot size in the R-90 Zone is 9,000 square feet. The subject lot is approximately 10,417 square feet in size and therefore satisfies the minimum lot size requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the R-90 Zone. The following table (shown on the next page of this report) from the Technical Staff report summarizes and demonstrates compliance of this special exception request with the relevant development standards for the R-90 Zone. 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-90 Zone.

Table 1: Applicable Development Standards – R-90 Zone

Development Standards	Required	Provided
Maximum Building Height: (59-C-1.327)	35 feet	±13 ft.
Minimum Net Lot Area: (59-C-1.321)	9,000 sq. ft.	10,417 sq. ft.
Minimum Lot Width at Front Building Line (59-C-1.322)	75 feet	±103'
Minimum Lot Width at Street Line (59-C-1.322)	25 feet	±92'
Minimum Setback from Street: (59-C-1.323)	30 ft.	±30 ft.
Minimum Side Yard Setback: (59-C-1.323)	8 ft. one side, 25 ft. sum of both sides	±13' one side, ±47' sum of both sides
Minimum Rear Yard Setback: (59-C-1.323)	25 ft.	±25 ft.
Maximum Building Coverage: (59-C-1.328)	30%	17%
Maximum Floor Area for Accessory Apartment	1,200 sq. ft. or less than 50% of GFA	970 sq. ft.

(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 15) and DHCA (Exhibit 14), there is one special exception accessory apartment use (BAS 1966) and one RLU within the staff-defined neighborhood. DHCA reported that Board of Appeals revoked the special exception (BAS 1966) on or about June 15, 2011. The Hearing Examiner concludes that the proposed special exception will not create an excessive concentration of similar uses, especially since the other

approved special exception for an accessory apartment was revoked in 2011. Even absent the revocation of BAS 1966, the Hearing Examiner agrees with Technical Staff's finding that "two accessory apartment uses in the staff-defined neighborhood will not result in an excessive concentration of special exceptions in the neighborhood." Exhibit 15, p. 12.

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

(i) *More spaces are required to supplement on-street parking; or*

(ii) *Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: As discussed in Part II.B of this report, there are two off-street parking spaces on the driveway and there is ample unrestricted off-street parking on Nicholas Drive and Ladd Street. The Hearing Examiner concurs with Technical Staff and finds that there is adequate off-street parking on the driveway and ample unrestricted on-street parking in front of Petitioner's house to accommodate the main dwelling and accessory apartment use. Exhibit 15, p. 8.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in § 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector's report (Exhibits 13 and 23) specifies certain conditions. Petitioner has agreed to meet all conditions and will comply with the directives of the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Jose R. Reyes, BOA No. S-2856, which seeks a special exception for an accessory apartment to be located at 11125 Nicholas Drive, Silver Spring, Maryland, be **GRANTED**, with the following conditions:

1. Petitioner is bound by his testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in this Report and Recommendation;
2. Petitioner must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement dated December 26, 2012 (Exhibit 13), and Addendum dated January 25, 2013 (Exhibit 23), as follows:
 - a. Bedroom 1, Install egress window no more than 44” from floor to window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24” and a minimum width of 20”;
 - b. Bedroom 2, Install egress window no more than 44” from floor to window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24” and a minimum width of 20”;
 - c. [Additional room 3]: Based on Petitioner’s testimony decreasing the number bedrooms from three to two, Mr. Goff amended his report to reflect that the room on the North East corner of the basement (identified on the Floor Plan as “room 3” marked as Exhibit 18) cannot be used as a bedroom or for sleeping due to the lack of an emergency egress. No sleeping is permitted in this room unless an egress window meeting the same requirements as noted above for bedrooms 1 and 2 is installed (Exhibit 23).
 - d. Install adequate heat source to bedroom 2 and 3;
 - e. Install range/stove in kitchen;
 - f. Bulkhead in living room and kitchen must be move up to 78” from the floor;
 - g. Install [standard residential exterior] light over the door to the accessory apartment;
 - h. Install [standard residential exterior] lighting on right side of house to light the walkway to the accessory apartment [entrance]. Pursuant to Mr. Goff’s testimony during the hearing, Petitioner can install low-voltage ground lights to illuminate the pathway to the accessory apartment as an alternative to installing an exterior light fixture to the right side of the house;
 - i. All work must have approved permits;

- j. The driveway can accommodate 2 cars;
 - k. There is off-street parking (No permit needed); and
 - l. There is 558.94 [square] feet of habitable space. The total [square] feet of the accessory apartment is 972.98. [Occupancy is limited to 2 unrelated persons or a family of 3.
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 add standard residential exterior lighting to the North East corner of the dwelling to illuminate the area where the stone pathway to the accessory apartment connects to the driveway;
 5. Petitioner will replace the 200 watt bulbs being used in the existing front and rear exterior light fixtures with standard residential bulbs that are 100 watts or less.
 6. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
 7. 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;
 8. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
 9. 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: February 25, 2013

Respectfully submitted,



Tammy J. CitaraManis
Hearing Examiner