

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2601

PETITION OF RENATO AND ROMANO PIETROBONO

OPINION OF THE BOARD

(Effective Date of Opinion: July 7, 2004)

Case No. S-2601 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment. Case No. S-2411 is an earlier application by the Petitioner for an accessory apartment on the same subject property which was indefinitely continued at the Petitioner's request, and never concluded.

The subject property is Parcel 9, William A. Wallace Subdivision, located at 2107 Briggs Road, Silver Spring, Maryland, 20906, in the R-90 Zone.

Pursuant to the provisions of Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred Case No. S-2601 to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a written report and recommendation for final action. The Hearing Examiner convened a public hearing on April 30, 2004, and on June 3, 2004, issued a report and recommendation for approval of the special exception.

Decision of the Board: Special exception granted subject
to conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's report and recommendation at its Worksession on June 23, 2004. After careful consideration and review of the record in the case, the Board adopts the report and recommendation, **denies** Case No. S-2411, Petition of Renato Pietrobono, and **grants** Case No. S-2601, Petition of Renato Pietrobono, subject to the following conditions:

1. The Petitioner is bound by his testimony and exhibits of record and by the testimony of his son Romano Pietrobono, to the extent such testimony and evidence are identified in the Hearing Examiner's report and recommendation and in the opinion of the Board;
2. The accessory apartment may be inhabited by no more than two unrelated persons or a family of five.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of July, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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 RENATO PIETROBONO:

	*	
Petitioner	*	
	*	Board of Appeals Case No. S-2601
Renato Pietrobono	*	
Romano Pietrobono	*	(OZAH Referral No. 04-31)
For the Petition	*	
	*	
Barbara Foresti, Department of Housing	*	
and Community Affairs	*	
Rob Dejter, Housing Code Inspector	*	
Department of Housing and	*	
Community Affairs	*	

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER’S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Petition No. S-2601, filed on January 6, 2004, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in a single-family residential structure located at 2107 Briggs Road, Silver Spring, Maryland 20906. The subject property is designated Parcel 9 in the William A. Wallace Subdivision and is zoned R-90 (Residential, one-family detached) (Tax Account No. 1302829182).

By Resolution adopted January 7, 2004 and effective March 5, 2004, the Board of Appeals (“BOA”) referred this matter to the Hearing Examiner to conduct a public hearing and render a written report and recommendation to the BOA. On February 6, 2004 the Board of Appeals scheduled a hearing in this matter, to be held by the hearing examiner on April 30, 2004.

Technical Staff at the Maryland-National Capital Park and Planning Commission reviewed the petition and, in a memorandum dated April 26, 2004 (Exhibit 13), recommended

approval of the petition with conditions.¹ The Department of Housing and Community Affairs (“DHCA”) inspected the property on April 20, 2004, and stated in a memorandum of the same date (Exhibit 12) that no deficiencies were found.

A public hearing was convened as scheduled on April 30, 2004 at which testimony was presented in favor of the petition by the Petitioner, his son and DHCA staff. No testimony was offered in opposition to the special exception. The record was held open for one week to receive an accurate site survey and a landscape plan, and closed on May 7, 2004.

II. BACKGROUND

A. The Subject Property

The subject property is located at 2107 Briggs Road, on the north side of Briggs Road between Ideal Drive and Layhill Road, approximately 350 feet from the intersection of Layhill Road and Briggs Road. The property measures approximately 31,675 square feet and has roughly 141 feet of street frontage. It is rectangular and flat, with a short slope up from the street. The property is developed with a single-story brick and stone home that has an attached, two-car garage. An additional story above the garage contains the separate dwelling unit proposed as an accessory apartment. The house has a second story deck in the rear, with stairs leading from the backyard to the proposed accessory apartment. It also has a rear patio off the main dwelling unit of the house; fencing along the sides and rear; a chain link fence in part of the front yard; a concrete driveway with an apron that starts out 16 feet wide and expands to 18 feet, accommodating four cars; an asphalt extension of the driveway accommodating two more cars; and a stone walkway from the driveway to the main entrance to the house and the front entrance to the accessory apartment, which is on the side of the garage.

Landscaping includes several large pine trees in the front yard, at the crest of a short slope up from the street, as well as various ornamental trees and shrubs. Backyard landscaping is limited to grass, two trees, and bushes along the north and west property lines. Staff opined that the

¹ The Staff Report is liberally quoted and paraphrased in Part II of this report.

landscaping is adequate. Staff further opined that the exterior lighting uses typical residential fixtures and does not spill over into adjoining properties or cause objectionable glare.

The front and rear of the house are shown in the photographs below. A house location plan showing the location of the building on the site is reproduced on page 4. A landscape and lighting plan is shown on page 5.

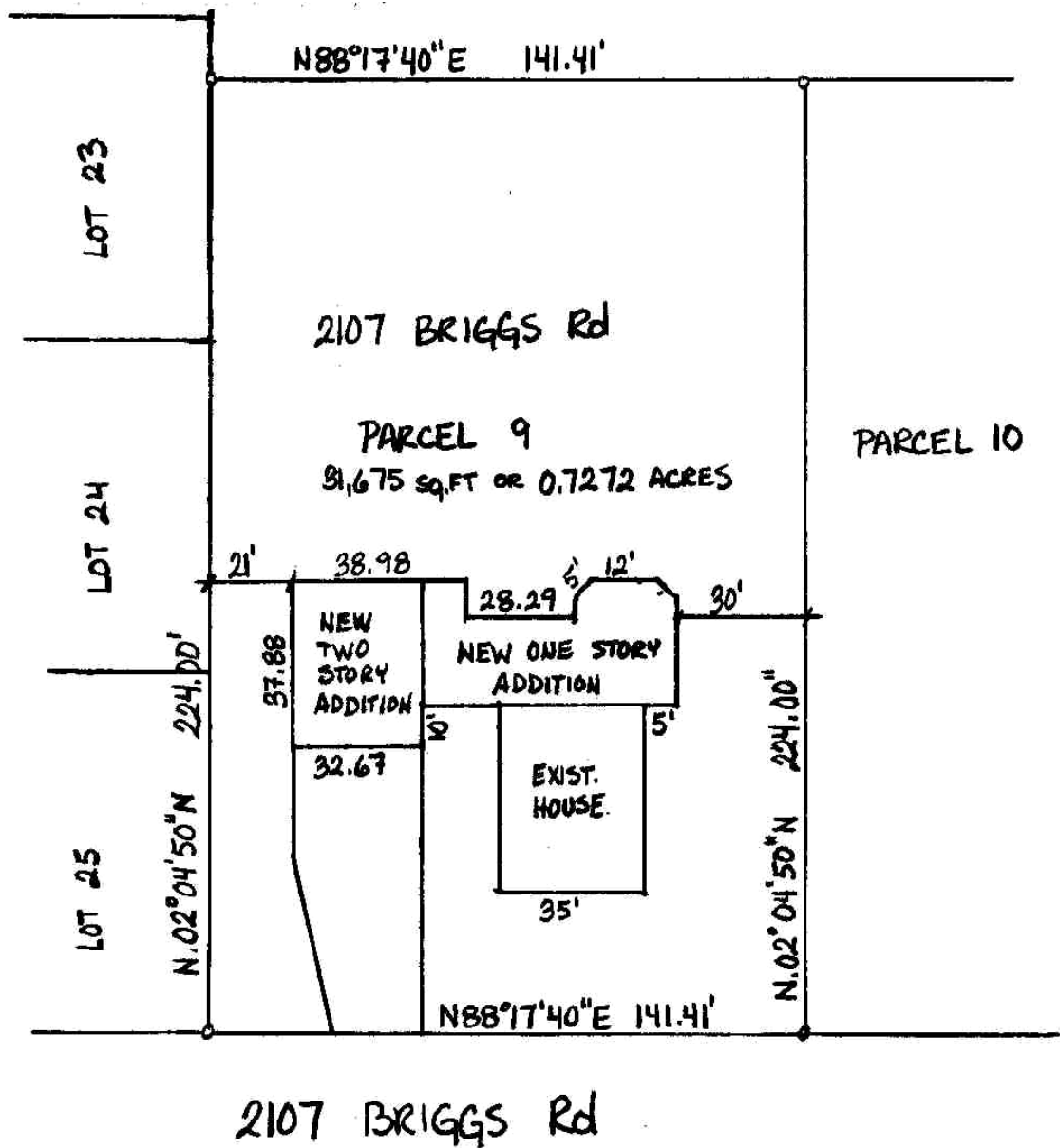
Photograph of Front of House, Ex. 8, top of page



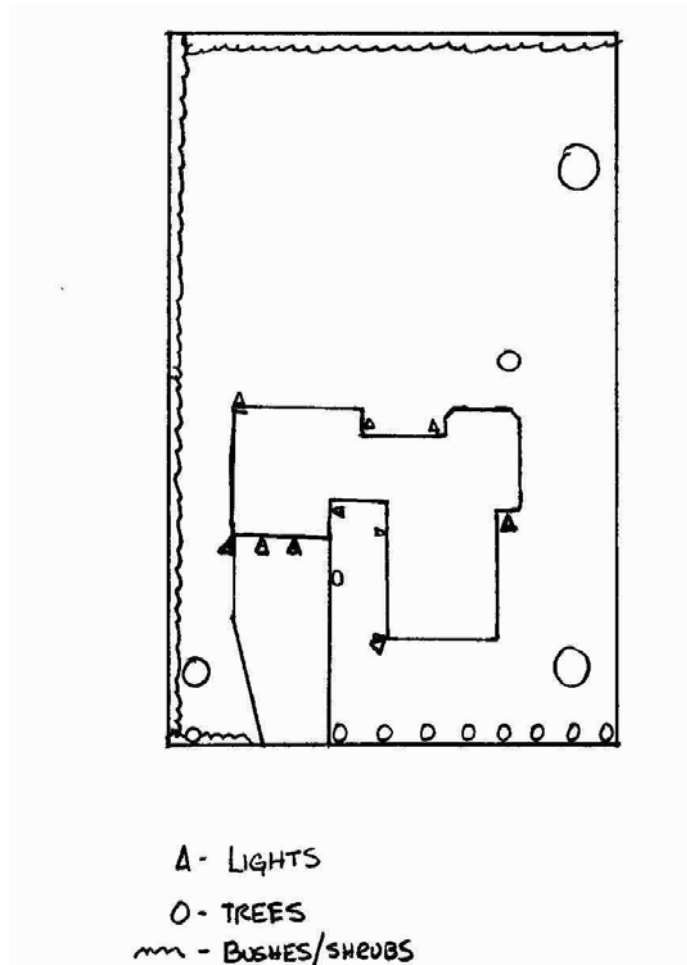
Photograph of Rear of House, Ex. 8, bottom of page



House Location Plan, Ex. 17(a)



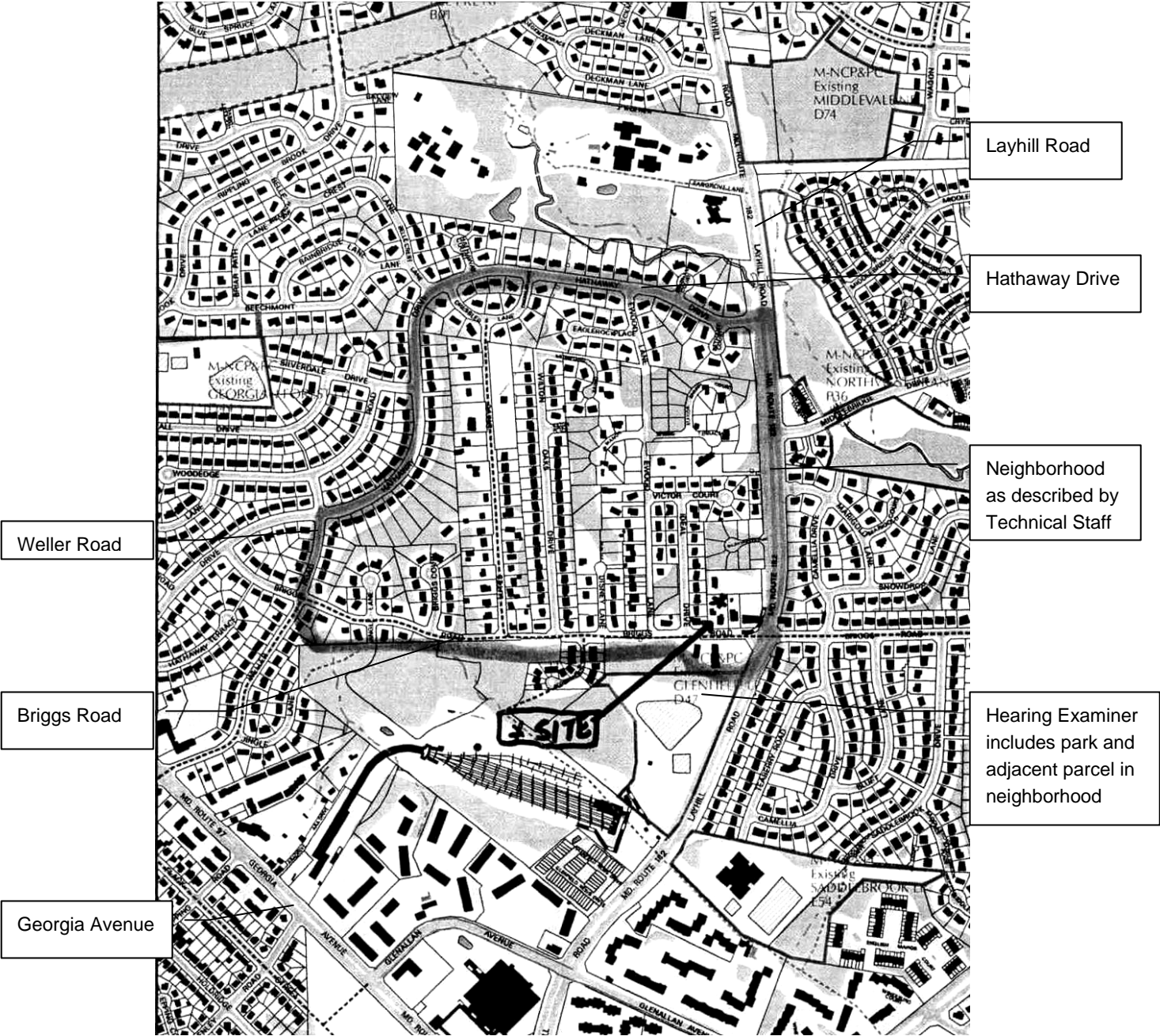
WILLIAM A. WALLACE SUBDIVISION

Landscape and Lighting Plan, Ex. 17(b)**B. The Neighborhood and its Character**

Technical Staff defined the general neighborhood of the subject property as the area bounded on the north by Hathaway Drive, on the west by Weller Road, on the east by Layhill Road and on the south by Briggs Road. Staff did not explain why they would exclude properties confronting the subject property from the defined neighborhood. The submitted vicinity map indicates that a park owned by MNCPPC is located directly across the street from the subject property, and confronting just to the west is a church. The Hearing Examiner finds that the general neighborhood for purposes of this case consists of that area bounded on the north by Hathaway Drive, on the west by Weller Road, on the east by Layhill Road and on the south by Glenfield Park and the nearby church property. The neighborhood as thus described consists primarily of single-family, detached homes in the R-90 Zone.

The only existing special exceptions within the neighborhood are an accessory apartment at 2101 Briggs Road, two doors east of the subject property, which was obtained by the Petitioner and his wife in 1985 (S-1070), and a horticultural nursery at 13211 Lutes Drive, approved in 1976 (S-454). The Petitioner and his wife also applied for an accessory apartment on the subject property in 1999 (S-2411), as discussed separately below. A vicinity map excerpted from the Staff Report is provided below.

Neighborhood Map, excerpted from Staff Report, Ex. 13



C. Previous Accessory Apartment Application

The Petitioner and his wife applied for an accessory apartment on the subject property in 1999 (S-2411). The Board of Appeals conducted a public hearing on the application on December 1, 1999. During the hearing, issues were raised concerning whether the addition that was proposed at that time, which included construction of the proposed accessory apartment, constituted “new construction” that would require a five-year wait before an application for an accessory apartment could be approved. The Board of Appeals continued the hearing to a future date to allow time for the Board to call a witness from the Department of Permitting Services, and for the Petitioners to present additional evidence. The file indicates that a subsequent hearing date was postponed at the request of Mrs. Pietrobono because her lawyer needed additional time. No further action took place with regard to that application, which has effectively been superceded by the present application. As noted at the close of this report, the Hearing Examiner concurs with Technical Staff’s recommendation that Case No. S-2411 be dismissed to avoid potential confusion.

D. Master Plan

The subject property is located within the area covered by the *Sector Plan for the Glenmont Transit Impact Area and Vicinity September 1997* (the “Master Plan”). The Master Plan does not specifically address the subject property or accessory apartments, although it supports the existing R-90 zoning for the property, which permits accessory apartments by special exception. The Master Plan’s objectives include maintaining the character of the existing neighborhoods in the study area and “stabilizing older neighborhoods west of Georgia Avenue where the conversion of dwellings to rental status and the deterioration of some homes are more prevalent.” Master Plan at 69, as quoted in Staff Report, Ex. 13 at 6. The subject property is in an older neighborhood west of Georgia Avenue, although the record does not indicate whether deterioration has been observed. Technical Staff observed that permitting an accessory apartment can help stabilize the residential character of the neighborhood and prevent deterioration of the property, because the owner of the property is required to live on-site. Moreover, a recent MNCPPC study noted that accessory apartments are a

good source of affordable housing that produces extra income for homeowners, disperses moderate-cost housing throughout the community and reduces sprawl by providing more concentrated urban housing opportunities. See Ex. 13 at 7. Technical Staff concludes that the proposed use is consistent with the Master Plan.

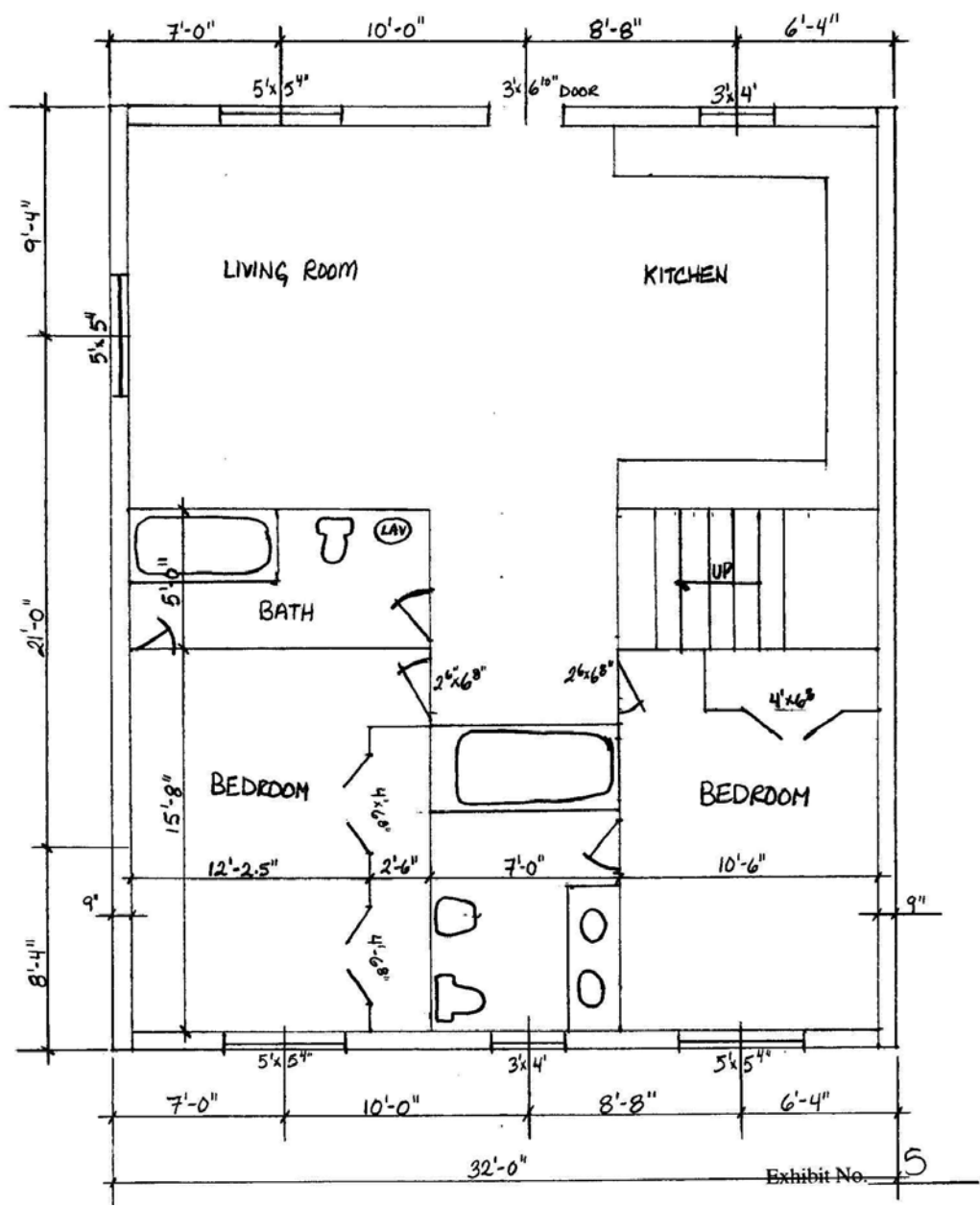
E. Proposed Use

The dwelling on the subject property has a separate apartment located in a second-story addition above the garage. As shown on the house location plan on page 4 of this report, the footprint of the house has three sections: the front section, which runs north to south on the east side of the house and extends out from the back section of the house about 45 feet; the back section, which runs east to west and connects the front section of the house with the garage; and the garage and second-story apartment, which run north to south on the west side of the house and extend out from the back section of the house about ten feet. The principle entrance to the main house is located on front part of the house, facing west, near the corner where the front and back sections meet. The apartment has two entrances. One is on the side of the garage, facing east and directly across from the main entrance to the house, near the corner where the garage and the back section of the house meet. The other entrance to the apartment is located at the rear of the house, off the second-story deck. Technical Staff found that these entrances do not detract from the appearance of the home as a single-family dwelling because the rear entrance is not visible from the street, and the front entrance, on the side of the garage, is barely visible from the street. The Hearing Examiner observes on the photograph of the front of the house reproduced on page 3 that, to the extent that the front entrance is visible, it looks like an entrance into the garage.

The Petitioner's written submissions in this case indicated that the Petitioner intended to reside in the second-floor apartment and Mr. Pietrobono Jr. intended to live in the main dwelling unit. Since that time, Mr. Pietrobono Jr.'s circumstances have changed and he no longer intends to live on the premises. The Petitioner intends to continue living in the main dwelling unit, and the separate apartment would be a rental unit.

The second-floor apartment at the subject property consists of approximately 1,184 square feet, with two bedrooms, two bathrooms, a kitchen and a living room. The site has a two-car garage, a driveway that can accommodate four cars, an extension to the driveway that can accommodate two more cars, and enough space along the street frontage to park three cars. A floor plan is shown below.

Floor Plan, Ex. 5



III. SUMMARY OF TESTIMONY

Rob Dejter, Housing Code Inspector for DHCA, testified at the hearing that, as noted in his inspection report (Ex. 12), the accessory apartment proposed here is above the garage of the dwelling. Mr. Dejter found no building code violations during his inspection, and he noted that this is a very well built unit, one of the nicest he has come across. Mr. Dejter's memorandum also states that based on habitable space of 583 square feet, the unit may be occupied by no more than two unrelated persons or a family not to exceed five persons.

Both the Petitioner and his adult son, Romano Pietrobono, participated in the hearing. Because the Petitioner is not a native speaker of English, Mr. Pietrobono Jr. provided the principal testimony. Mr. Pietrobono Sr. stated that he was comfortable having his son speak on his behalf. In the discussion that follows, representations made by either Mr. Pietrobono Sr. or his son are attributed to "the Petitioner."

The Petitioner adopted the Staff Report as part of his evidence in this case. He noted, however, that the Staff Report incorrectly states that the address of the accessory apartment would be 2107B and the main unit would be 2107A. Mr. Pietrobono Jr. gave that information to Technical Staff, but later realized that the "A" and "B" designations that the power company had applied to the two electrical boxes do not affect the mailing address. He testified at the hearing that the accessory apartment and the main dwelling would have the same address, as required under the Zoning Ordinance, and all mail would come to the same mailbox.

The Petitioner confirmed that he would have only one rental unit on the subject property, and that the house was built in 1953. Mr. Pietrobono Sr. is currently the only occupant of the house, and he understands that he is required to live there if he has an accessory apartment. He submitted into the record a deed showing that sole ownership of the subject property was conveyed to Mr. Pietrobono Sr. by quitclaim deed in 2001. See Ex. 15.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because there may be locations where it is not appropriate. 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. Based on the testimony and evidence of record, I conclude that the instant petition meets the general and specific requirements for the proposed use, with the conditions recommended at the conclusion of this report. The Petitioners have agreed to comply with these conditions.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and 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 § 59-G-1.21. 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 special exception that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed special

exception that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff in this case identified the following as physical and operational characteristics necessarily associated with an accessory apartment: the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it; the provision within the apartment of the necessary facilities, spaces and floor area to qualify as habitable space under the Building Code; a separate entrance and walkway and sufficient lighting; sufficient parking; 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 the potential for additional noise. Technical Staff concluded and the Hearing Examiner agrees that the accessory apartment proposed in this case has no unusual physical or operational characteristics, nor are there any unusual site characteristics, therefore the proposed use would have no non-inherent adverse effects.

B. General Conditions

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

Sec. 59-G-1.21. General conditions.

- (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.

- (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 special exception would comply with the standards and requirements set forth for the use in Code §59-G-2.00, as detailed 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 an approved and adopted 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 evidence supports Technical Staff's finding that the proposed special exception would be consistent with the objectives of the *Sector Plan for the Glenmont Transit Impact Area and Vicinity September 1997*. The Master Plan supports the existing zoning category, which allows accessory apartments by special exception. Moreover, one of its objectives is stabilizing older neighborhoods west of Georgia Avenue, such as the neighborhood of the subject property. As Technical Staff observed, allowing an accessory apartment can help stabilize the residential character of the neighborhood and prevent property deterioration, because the property owner would be required to live in the house.

- (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 would be in harmony with the general character of the neighborhood considering the cited factors. It would have little impact on population density; it would not result in any changes to the exterior of the house; it would result in a modest increase in intensity of use of the property with no change in the character of such use; it would result in only a minimal increase in vehicular traffic; the site has ample parking on-site and in the street in front of the house; and only one accessory apartment has been identified in the general 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: The evidence demonstrates that due to the modest impacts of the proposed accessory apartment, the special exception would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (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: Based on the nature of the use and the typical residential exterior lighting, the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity.

- (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: Only two special exceptions have been identified in the general neighborhood. Adding the accessory apartment proposed here would not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Moreover, given that the proposed use is residential in nature, it would be very unlikely to alter the predominantly residential nature of the area.

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

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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: The Hearing Examiner accepts Technical Staff's conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: No subdivision approval would be required. Technical Staff reports that the proposed accessory apartment would generate one additional vehicle trip during the peak hours, far below the 30-trip threshold that triggers Local Area Transportation Review. For purposes of Policy Area Transportation Review, the subject property is located within the Glenmont policy area, which had remaining housing capacity as of March 31, 2004 of 902 units.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The evidence of record supports the finding that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards

The memorandum submitted by DHCA (Ex. 12), the Staff Report (Ex. 13) and the Petitioner's testimony and written submissions provide sufficient evidence that the specific standards set forth in Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

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

(a) **Dwelling unit requirements:**

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

Conclusion: Only one accessory apartment is proposed.

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

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

Conclusion: The apartment is located in a second story that was added to an attached garage. Thus, the apartment and the main dwelling unit share at least one common wall.

- (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 addition or extension of the main dwelling is proposed.

- (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 Petitioner estimated that the house is approximately 50 years old.

- (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 Petitioner lives alone in the main dwelling unit. The evidence indicates that the accessory apartment is currently vacant.

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

Conclusion: The evidence supports the conclusion that the single-family appearance of the dwelling is unaffected by the entrances to the accessory apartment. The front entrance is barely visible from the street and has the appearance of a door into the garage, and the back entrance is not visible from the street.

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

Conclusion: No changes to the exterior of the building are currently planned in connection with this accessory apartment.

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

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

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

Conclusion: The accessory apartment is clearly subordinate to the main dwelling because the apartment occupies only the space above the garage, while the main dwelling is comprised of the garage plus the entire first floor structure.

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 plans to live in the main dwelling unit permanently.

- (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: The Petitioner and his wife purchased the subject property on September 3, 1975. The Petitioner became sole owner by virtue of a quitclaim deed on July 2, 2001. See Ex. 15.

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

Conclusion: The Petitioner will receive compensation for only one dwelling unit.

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

Conclusion: The Petitioner is the owner of the property.

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

Conclusion: Not applicable

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject lot is approximately 31,675 square feet in size. As detailed in the Staff Report on pages 7-8, the subject property complies with all development standards of the R-90 Zone, including setbacks and building height.

(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: The fact that only one existing accessory apartment has been identified in the broadly defined neighborhood of the subject property supports the conclusion that this special exception, if granted, will not result in an excessive concentration of similar uses in the general neighborhood. The Hearing Examiner recommends that the earlier application for an accessory apartment on the subject property (S-2411) be revoked, as discussed in Part II.C. above, because the building has changed, the site ownership has changed and the application has effectively been superceded by the present application.

(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: This property has ample parking, with two garage spaces, six on-site spaces outside the garage and three spaces in the street in front of the property.

D. Additional Applicable Standards

In addition to complying with the zoning requirements set forth in Chapter 59-G, an accessory apartment must be approved for habitation by the Department of Housing and Community Affairs. In this case Mr. Dejter, testifying for DHCA, found that the proposed accessory apartment meets all current standards.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2601, for a special exception to permit an accessory apartment use in a single-family residential structure located at 2107 Briggs Road, Silver Spring, be **GRANTED**, with the following conditions:

1. The Petitioner is bound by his testimony and exhibits of record and by the testimony of his son Romano Pietrobono, to the extent such testimony is referenced in this report;
2. The accessory apartment may be inhabited by no more than two unrelated persons or a family of five.

For the reasons outlined in Part IV.C above, I further recommend that Petition No. S-2411 for a special exception to permit an accessory apartment use in a single-family residential structure located at 2107 Briggs Road, Silver Spring, be **DENIED**.

Dated: June 3, 2004

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner