

I. STATEMENT OF THE CASE

Petition No. S-2831, filed on December 22, 2011, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use on the first floor of an existing single-family home located at 7608 Rossdhu Court, Chevy Chase, Maryland, on land in the R-90 (Residential, One-family, Detached) Zone. The property's legal description is Lot 28, Block 1 of the Rollingwood Subdivision of Chevy Chase. The tax account number is 00531671.

The Hearing was scheduled for April 26, 2012, by notice dated February 10, 2012 (Exhibit 11). Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued February 13, 2012, recommended approval of the special exception, with conditions. Exhibit 12.¹

The Department of Housing and Community Affairs (DHCA) inspected the property on April 23, 2012. Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated April 23, 2012 (Exhibit 14). Ms. McCreary determined that the accessory apartment has 373 square feet of habitable space, and occupancy will be limited to two persons. Also submitted by DHCA was a memorandum dated April 24, 2012, from Ada DeJesus of DHCA, indicating that there are no other accessory apartments or registered living units in the area. Exhibit 15.

A public hearing was convened on April 26, 2012, as scheduled, and Petitioners Paul and Jamileh Mogin appeared *pro se*. Also testifying was Inspector Lynn McCreary of the Department of Housing and Community Affairs. Petitioners executed an affidavit of posting (Exhibit 16), and identified photos from the Staff report. They adopted the findings in the Technical Staff Report (Exhibit 12) and in the Housing Code Inspector's Report (Exhibit 14), as Petitioners' own evidence (Tr. 8). They also agreed to meet all the conditions set forth in both reports. Tr. 8-9.

The record was held open till May 7, 2012, to await the filing of the transcript and a copy of

¹ The Technical Staff report is frequently quoted and paraphrased herein.

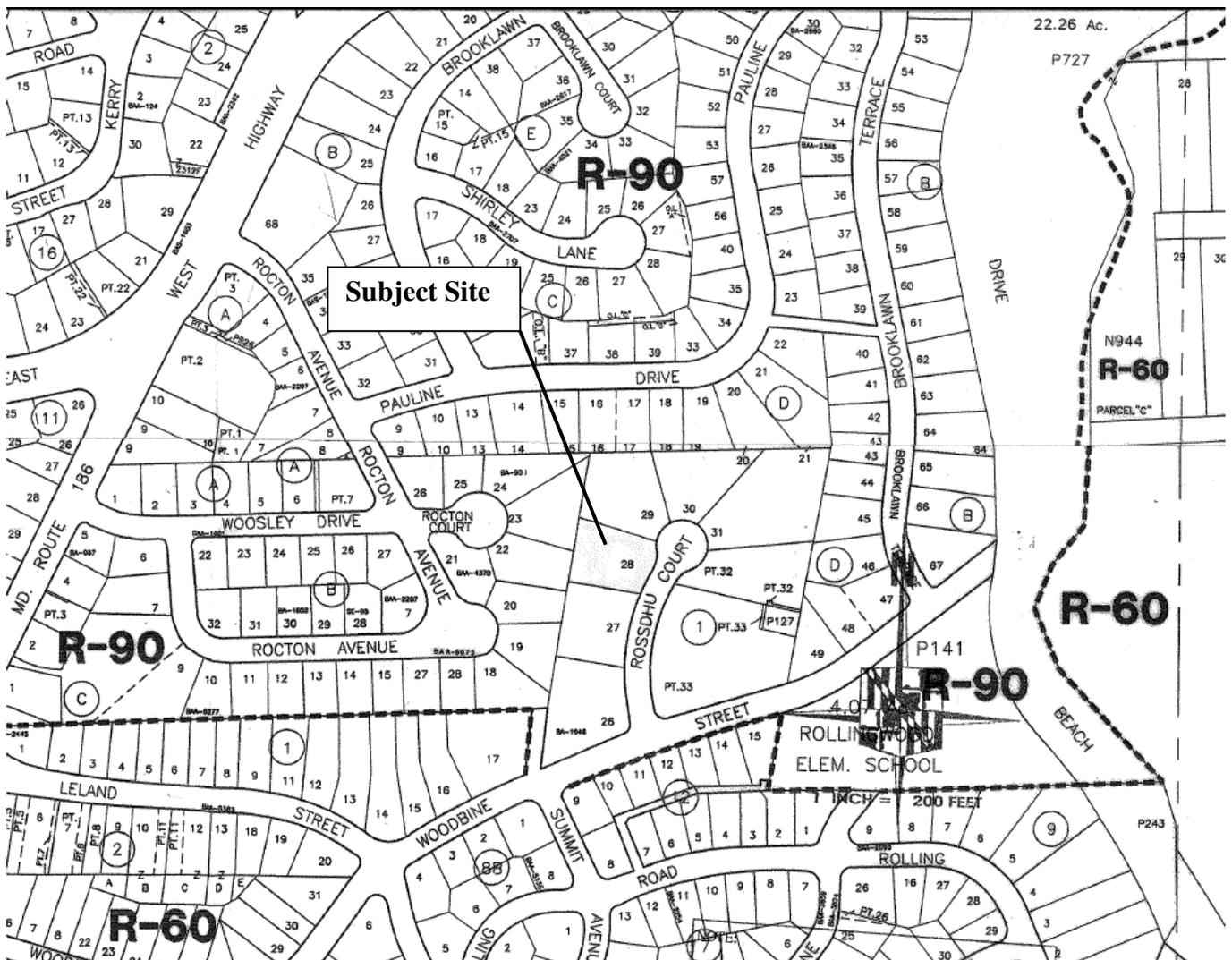
Petitioners' deed. The deed (Exhibits 19(a)) was timely filed in this case on April 27, 2012. The record closed, as scheduled, on May 7, 2012.

There is no opposition to this special exception, and the petition meets all of the statutory criteria. The Hearing Examiner therefore recommends that the petition be granted, with conditions.

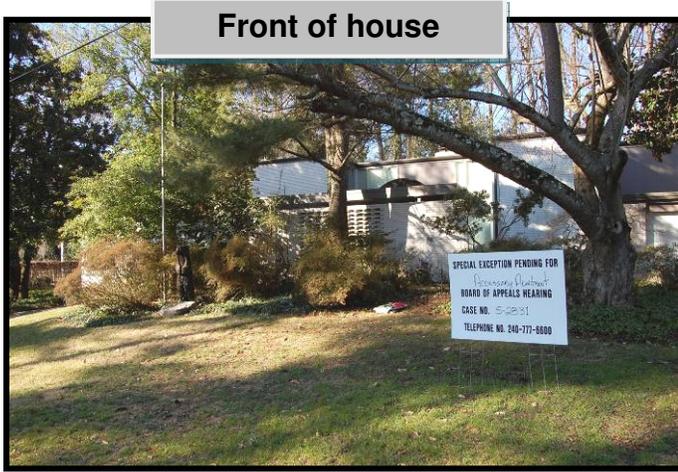
II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is located at 7608 Rossdhu Court, Chevy Chase, Maryland in the Rollingwood Subdivision. Rossdhu Court is a cul-de-sac, which is entered from Woodbine Street, about 800 feet west of Beach Drive, as can be seen on the following Zoning Map, Exhibit 10:



Staff also provided photographs of the front yard and the walkway leading from the circular drive to the accessory apartment entrance on the south side of the house (Exhibit 12, pp. 4-5):



Front of house



Walkway to south side from circular driveway.



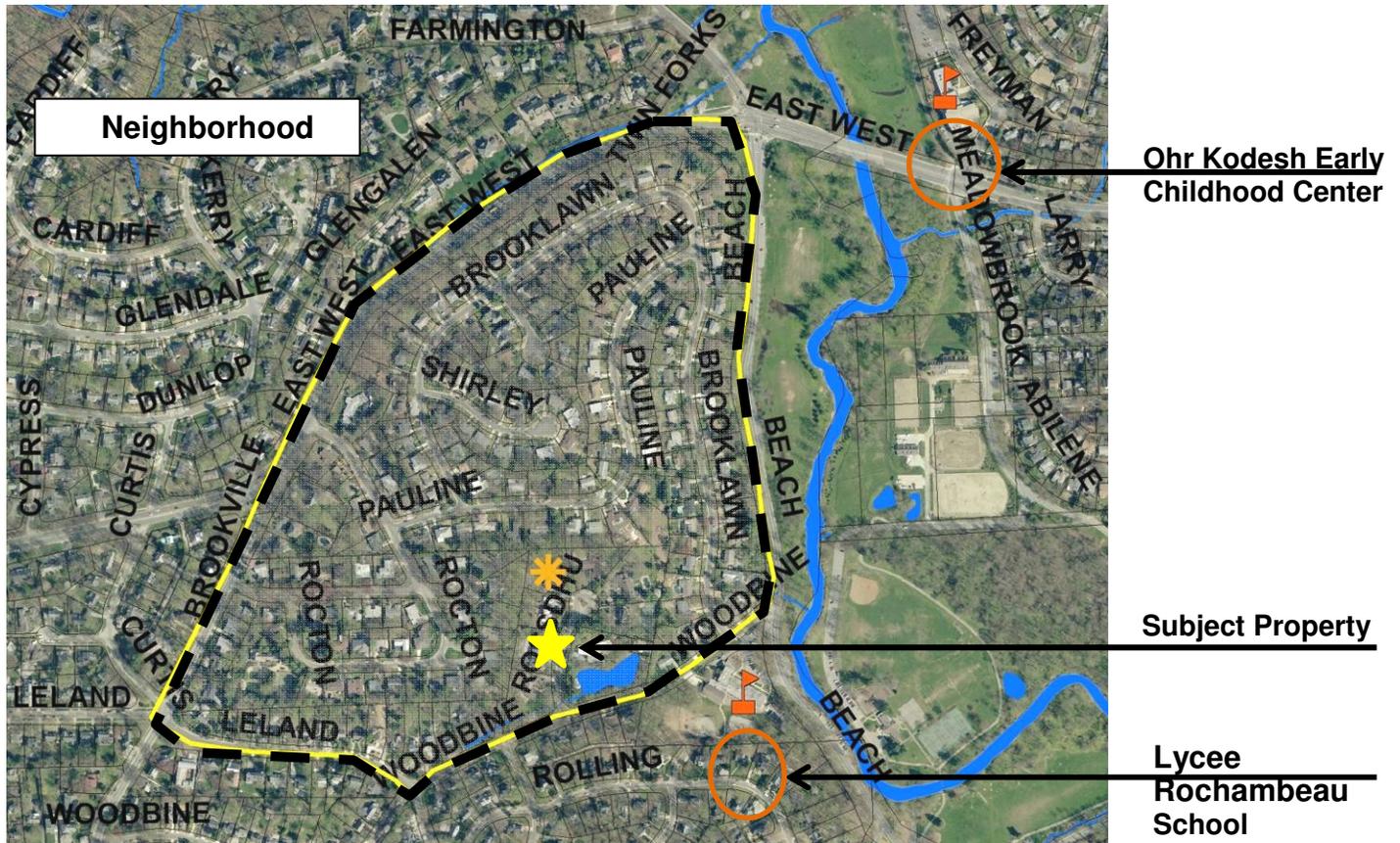
Side walkway to apartment from front of dwelling



Front of House (Photo by Housing Code Inspector)

The Housing Code Inspector reports that, in addition to the circular drive partially depicted above (Ex. 18(a)), a car port and a two-car garage are attached to the main house. Ex. 14, Item # 3.

Technical Staff defined the general neighborhood as bounded by East-West Highway to the north, Beach Drive to the west, Woodbine Street to the south, and Brookville Road to the east. Staff noted that the neighborhood boundary was drawn to include any nearby properties that may be affected by a potential increase in density or traffic. The Hearing Examiner accepts this neighborhood definition, and it is shown on the next page on a Map supplied by Staff (Ex. 12, p. 6):



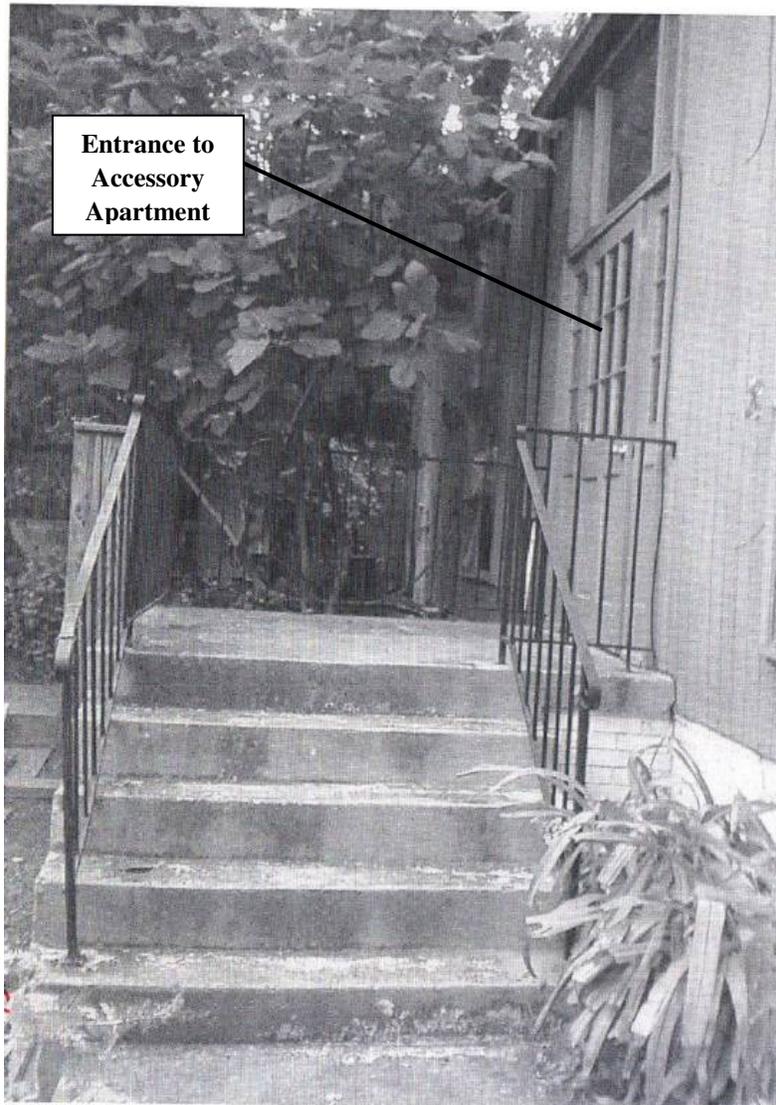
As shown on the Neighborhood Map, Lycee Rochambeau (French International School) is on the south side of Woodbine Street, and Ohr Kodesh Early Childhood Center is on Freyman Drive to the north of East-West Highway. Technical Staff reports that neighborhood consists of 220 one-family, detached homes, and there are currently no special exceptions within the area. Exhibit 12, pp. 5-6. A memorandum from DHCA confirms that there are no other accessory apartments or registered living units in the area. Exhibit 15.

B. The Proposed Use

The Petitioners are seeking a special exception to allow a 495 square-foot accessory apartment on the first floor of their existing home.² Exhibit 4(b). The apartment entrance will be on

² Petitioners' initial Statement (Exhibit 4(a)) had erroneously indicated a floor area of 1,074 square feet. They corrected this figure to 495 square feet in a January 18, 2012 Statement (Exhibit 4(b)). This correction was picked up by Staff in one part of their report (Exhibit 12, p. 16), but not on other pages (Exhibit 12, pp. 3 and 8). Therefore, the Hearing Examiner corrected pages 3 and 8 of the Staff report and a similar erroneous entry on the Floor Plan (Exhibit 5).

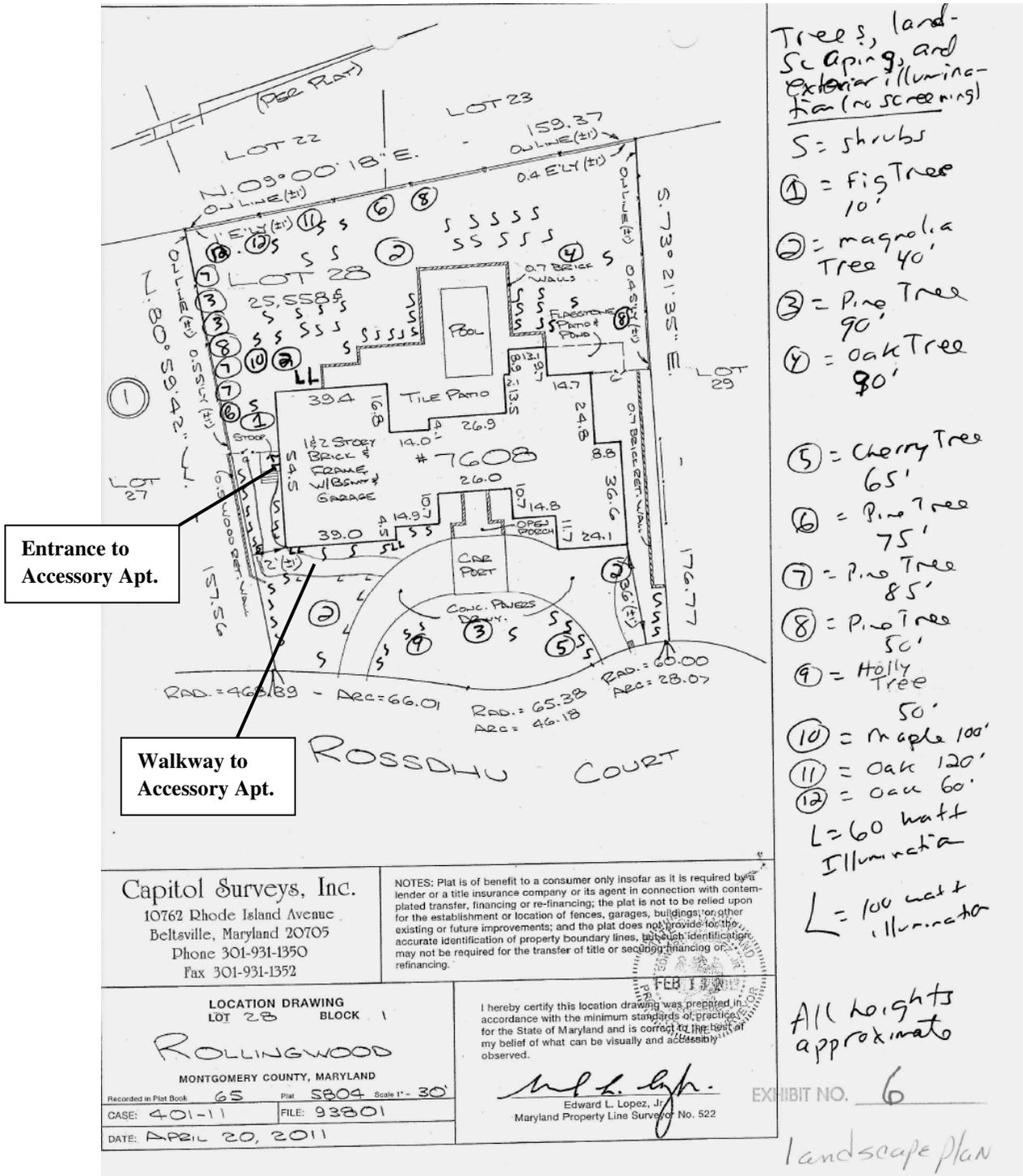
the south side of the home, as shown in the Site Plan (Exhibit 3), depicted on page 4 of this report and in the bottom left photograph depicted on page 5 of this report. A close-up of the apartment entrance was provided in a photograph supplied by Petitioners (Exhibit 9(b)), reproduced below:



As noted by Technical Staff, the accessory apartment entrance will be clearly distinct from the entrance to the main dwelling, and will not detract from the appearance of the neighborhood. Exhibit 12, p. 3. A concrete walkway leads from the a circular brick driveway to the apartment entrance on the south side of the home. Ample parking is available for the tenants in the circular

drive, and there is on-street parking along Rossdhu Court. The availability of both off-street and on-street parking was confirmed by the Housing Code Inspector. Exhibit 14, Item 3 and Tr. 20.

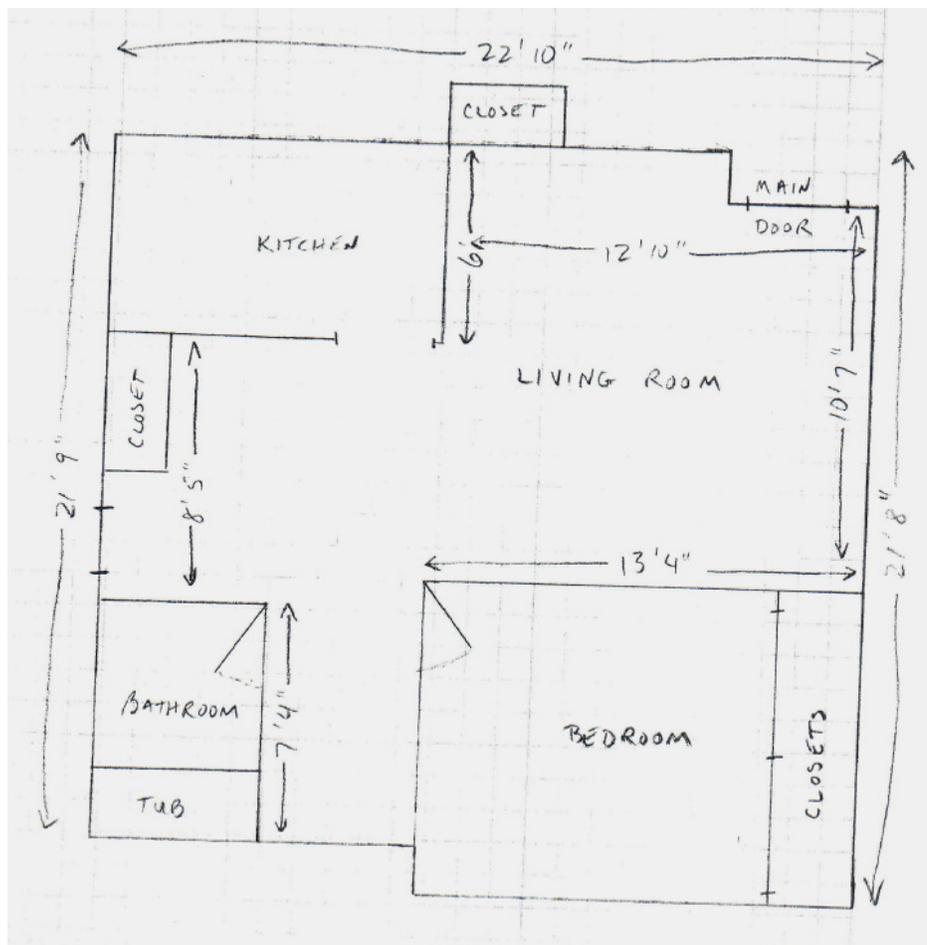
The Landscape and Lighting Plan (Exhibit 6), as modified at the hearing to show the walkway connecting to the accessory apartment, is reproduced below:



As described by Technical Staff, the property's landscaping is well-maintained, and the plan falls within the standards expected for a typical one-family home. There are no wetlands or sensitive features on the site, and the special exception is exempt from the forest conservation law. Staff concluded that there are no environmental issues or concerns associated with the proposed accessory apartment. Exhibit 12, p. 7 and Exhibit 7.

Technical Staff also described the lighting as residential in character, located to the left of the main entry to the home and along the walkway from the circular driveway to the apartment entrance. However, Staff noted that, ". . . if the tenant parks along Rossdhu Court, it may be difficult to see the driveway and apartment walkway. Ground level lighting from the street to the walkway is recommended." Exhibit 12, p. 3. The Hearing Examiner has proposed a condition in Part V of this report to carry out Staff's recommendation.

The Floor Plan of the accessory apartment (Exhibit 5) is shown below:



The overall net floor area of the apartment is approximately 495 feet, and includes a living room, a bedroom, a kitchen and a bathroom, as shown above. The Department of Housing and Community Affairs (DHCA) inspected the property on April 23, 2012, and Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated April 23, 2012 (Exhibit 14). Ms. McCreary determined that the accessory apartment has 373 square feet of habitable space, and occupancy will be limited to two persons. The substance of her report is set forth below:

. . . The Accessory Apartment is located at grade level on the left side of the main house. The issues regarding Accessory Apartment standards are as follows:

1. There is a 2nd independent living unit located within the main house. This unit must be eliminated.
2. The unit measures 373 square feet of habitable space which would allow for the occupancy of two people.
3. There is adequate off street parking that would accommodate for least two vehicles parked side by side. There is also a car port and a two car garage attached to the main house.
4. A properly functioning, permanently installed stove/oven combination is required.
5. The bathroom tiled wall shows signs of deterioration. The cause of the deterioration must be determined and corrected and all resultant damage repaired in a professional, workmanlike manner.

Ms. McCreary testified that she sees no reason why the accessory apartment cannot be approved, if the recommended conditions are met. Tr. 21. Ms. McCreary confirmed that there is ample off-street and on-street parking available and she provided photographs of the premises.



Technical Staff discussed the transportation issues in their report (Exhibit 12, pp. 6-7):

The proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance. The existing one-family dwelling is estimated to generate one peak-hour trip during the weekday morning and evening peak-periods. The accessory apartment is estimated to generate one additional peak-hour trip during the weekday peak periods. Since the number of peak hour trips, when combined, will generate fewer trips than the threshold figure requiring a traffic study (30 peak-hour trips), the proposed accessory apartment passes the Local Area Transportation Review (LATR). Policy Area Mobility Review (PAMR) is not required because the accessory apartment will generate less than four new peak-hour trips within the weekday morning and evening peak periods.

Vehicular access to the existing house and accessory apartment can be accommodated by the property's circular driveway or on street parking along Rossdhu Court. The special exception will not have an adverse effect on vehicular and pedestrian access or pedestrian safety. [Footnote Omitted.]

Given this evidence, the Hearing Examiner finds that the proposed accessory apartment will not unduly burden local transportation facilities and that there is adequate parking to accommodate both the owners and the accessory apartment tenants.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause non-inherent adverse effects on the neighborhood warranting denial of the petition.

C. Neighborhood Response

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

D. The Master Plan

The subject property lies within the area covered by the 1990 Bethesda Chevy Chase Master Plan. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 12, p. 6. However, the Master Plan does recommend special exception uses "that contribute to the housing objectives in the Master Plan" (p. 31, ¶ numbered 4). In fact, the Plan specifically "endorses expanding choices of housing types by provision of accessory apartments" (p. 33, ¶

numbered 4). Since the subject application furthers the Plan's general guidance, Technical Staff found the proposed use to be consistent with the Bethesda-Chevy Chase Master Plan, as does the Hearing Examiner.

An accessory apartment maintains the existing scale and type of housing, while providing for additional housing in the area. This accessory apartment is not visible from the street and therefore does not change the existing structure's appearance as a single-family dwelling, compatible with the surrounding neighborhood.

Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the Bethesda Chevy Chase Master Plan.

III. SUMMARY OF HEARING

At the hearing, testimony was heard from Petitioners Paul and Jamileh Mogin and from Housing Code Inspector Lynn McCreary. There was no opposition. The Hearing Examiner noted corrections made to the Staff report regarding the size of the accessory apartment. See footnote 2. The record was held open for 10 days to give Petitioners an opportunity to file a copy of their deed. Paul and Jamileh Mogin (Tr. 5-19; 25-26):

Petitioners executed an affidavit of posting (Exhibit 16) and identified photos they took (Exhibit 9) and those in the Staff report. They also identified their submitted plans (Exhibits 3, 5 and 6) and modified the Landscape and Lighting Plan (Exhibit 6) to show the walkway connecting to the accessory apartment. They adopted the findings in the Technical Staff Report (Exhibit 12) and in the Housing Code Inspector's Report (Exhibit 14), as Petitioners' own evidence (Tr. 8). They also agreed to meet all the conditions set forth in both reports, including removing the second independent living unit located within the main house and installing the ground lighting recommended by Technical Staff. Tr. 7-9.

Mr. Mogin further testified that the only external changes to the site would be the addition of some residential style, ground level lights recommended by Technical Staff for the path between the street and the accessory apartment. Tr. 15. They noted that there are at least four off-street parking spaces (two in the garage and two in the car port over a portion of the circular drive), and that there is ample on-street parking on Rossdhu Court. The tenants will park either in the carport or on Rossdhu Court. Tr. 17-19.

In Mr. Mogin's recollection, they settled on their home around June 16, 2011, and he will submit a copy of his deed. Tr. 13.

Housing Code Inspector Lynn McCreary (Tr. 19-25):

Housing Code Inspector, Lynn McCreary, testified that she inspected the premises on April 23, 2012, and that her findings are set forth in her report of April 23, 2012 (Exhibit 14). Tr. 19-21. She stated that the unit measures 373 square feet of habitable space which would allow for the occupancy of two people. Tr. 20.

Ms. McCreary confirmed that there is ample off-street and on-street parking available and said she saw no reason to deny the special exception. Tr. 20-21. Ms. McCreary also identified photographs she took of the premises (Exhibit 18). Tr. 21-25.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the

requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 12).

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

A. Standard for Evaluation

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

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

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

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 12, p. 9):

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

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

Technical Staff found (Exhibit 12, pp. 9-10):

In this case, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located on the south side of the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit has a separate entrance apart from the main entrance to the dwelling. The apartment entrance is on the south side of the dwelling with significant vegetation screening the view from the street, making it difficult to distinguish from any other neighborhood home. The proposed walkway and grounds of the accessory apartment appear safe given the lighted apartment entrance and the illumination from the main home entrance. Additional ground level lighting is recommended from the street to the apartment walkway.

Parking for the accessory apartment will be sufficient. There is sufficient space both along Roussdhu Court and within the existing driveway, so parking for the neighborhood will remain adequate even with the existence of an additional household on the block.

Based on these findings, Staff concluded (Exhibit 12, p. 10):

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

The Hearing Examiner agrees with Staff's assessment. Considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there would be no non-inherent adverse effects from the proposed use.

B. General Conditions

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

Sec. 59-G-1.21. General conditions.

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

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

Conclusion: An accessory apartment is a permissible special exception in the R-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 Bethesda-Chevy Chase Master Plan, approved and adopted in 1990. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 12, p. 6. However, the Master Plan does recommend special exception uses “that contribute to the housing objectives in the Master Plan” (p. 31, ¶ 4). In fact, the Plan specifically “endorses expanding choices of housing types by provision of accessory apartments” (p. 33, ¶ 4). An accessory apartment would maintain the existing scale and type of housing, while providing for additional housing in the area. Technical Staff therefore found the proposed use to be consistent with the Bethesda-Chevy Chase Master Plan, as does the Hearing Examiner.

- (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 located in an existing dwelling and will not require

significant external changes. It therefore will maintain its residential character. There will be sufficient parking, considering the availability of the circular drive, a garage, a carport and on-street parking. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are no other accessory apartments in the defined neighborhood, and the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

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

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

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

Conclusion: Technical Staff found that “Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity. The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 12, p. 12. Based on this record, the Hearing Examiner so finds that the use will be indoors and residential, and that it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

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

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

- (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 subject site will be adequately served by existing public services and facilities (Exhibit 12, p. 13), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the*

site is not currently valid for an impact that is the same as 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 application was submitted.

Conclusion: The special exception sought in this case would 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. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 12, p. 13. 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. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

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

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that

“the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic,” the Hearing Examiner so finds. Exhibit 12, p. 13.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

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

(a) Dwelling unit requirements:

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

Conclusion: Only one accessory apartment is proposed. The Housing Code Inspector noted that there is another independent living unit presently located within the main house (Exhibit 14, Item 1), but Petitioners have agreed to eliminate it and not to accept rentals except for the subject accessory apartment. Tr. 7-8.

- (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 on the first floor of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

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

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

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

Conclusion: The house was built in 1961. Exhibit 12, p. 15. It therefore meets the “5 year old” requirement.

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

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

Conclusion: The proposed use will not violate any of the provisions of this subsection. As mentioned above, the Housing Code Inspector noted that there is another independent living unit presently located within the main house (Exhibit 14, Item 1), but Petitioners have agreed to eliminate it and not to accept rentals except for the subject accessory apartment. Tr. 7-8. A condition is recommended in Part V of this report to ensure compliance with this provision.

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

Conclusion: Access to the accessory apartment will preserve the appearance of a one-family dwelling. The apartment entrance is separate from the main entrance and

substantially screened with landscaping. As noted by Technical Staff, the apartment entrance will have the appearance of a typical first floor entry to a one-family home.

There will thus be no change to the home's residential appearance.

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

Conclusion: The only external improvements planned by Petitioners are to provide residential style, ground level lighting for the path to the accessory apartment from the street, as called for by Technical Staff and recommended as a condition in Part V of this report. Exhibit 12, p. 16.

(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, at 495 square feet (with habitable space of 373 square feet) is well below the 1,200 square foot maximum for an accessory apartment.³ It will also clearly be subordinate to the main dwelling, which according to Technical Staff, has a total floor area of 4,700 square feet. Exhibit 12, p. 3.

59-G § 2.00(b) Ownership Requirements

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

Conclusion: The Petitioners will live in the main dwelling unit on the property.

(2) *Except in the case of an accessory apartment that exists at the time of*

³ See footnote 2 of this report.

the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

Conclusion: According to the Maryland Tax Records (Exhibit 17), Petitioners purchased the property on June 29, 2011. While that may have been the date it was recorded in the land records, the deed submitted by Petitioners (Exhibit 19(a)) demonstrates that it was executed by the sellers on June 15, 2011. Moreover, Petitioners indicated in Exhibits 19 and 19(b)) that settlement took place on the next day, June 16, 2011. The one-year rule therefore will not be satisfied until June 16, 2012. However, this provision, by its terms, does not apply “*in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner.*” According to Petitioners’ statement (Exhibit 4(a)), the accessory apartment existed and was occupied when they purchased the home. Although the tenant has given notice that she intends to vacate (Exhibit 4(b)), the occupancy of the apartment is not mentioned in the provision. Nevertheless, it appears that the existing accessory apartment had not been lawfully approved, so it is doubtful that the exception to the one-year rule may be applied in this case. The simple solution is a proviso in the Board’s resolution that the effective date may be no earlier than June 16, 2012. Such a proviso has been included in Part V of this report.

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

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

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

Conclusion: The Petitioners are the owners of the property. Exhibit 19(a).

(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 25,558 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone. Exhibit 12, p. 8. The following table from the Technical Staff report summarizes the relevant development standards for the application. Exhibit 12, p. 8.

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	2 story	§ 59-C-1.327
Minimum Lot Area	9,000 sq. ft.	25,558 sq. ft.	§ 59-C-1.322(a)
Minimum Lot Width at Front Building Line	75 ft.	132 ft.	§ 59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	127 ft.	§ 59-C-1.322(b)
Minimum Setback from Street	30 ft.	36 ft.	§ 59-C-1.323(a)

Minimum Rear Yard Setback	25 ft.	72 ft.	§ 59-C-1.323(b)(2)
Maximum Building Coverage	30 percent	26 percent	§ 59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	495 sq. ft. ⁴	§ 59-G-2.00(a)(9)

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

Conclusion: As previously stated in this report, the Hearing Examiner concludes that the proposed special exception will not create an excessive concentration of similar uses since there are no other accessory apartments in the neighborhood.

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

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

Conclusion: As discussed in Part II.B. of this report, there are off-street spaces on Petitioners' circular drive and in Petitioners' garage and carport. There is also available on-street parking. Technical Staff found that "The subject property has a circular driveway large enough to accommodate parking and there is adequate street parking as well." Exhibit 12, p. 18. The Housing Code Inspector agreed. Exhibit 14, Item 3 and Tr. 20. The Hearing Examiner so finds.

⁴ See footnote 2 of this report.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 14) specifies certain conditions. Petitioners have agreed to meet all conditions, and will comply with directives of the Housing Code Inspector. Tr. 8-9.

V. RECOMMENDATION

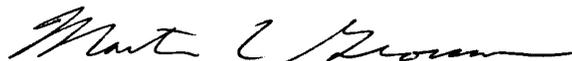
Based on the foregoing analysis, I recommend that the Petition of Paul and Jamileh Mogin, BOA No. S-2831, which seeks a special exception for an accessory apartment to be located at 7608 Rossdhu Court, Chevy Chase, Maryland, be GRANTED, with the following conditions and an effective date no earlier than June 16, 2012:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Lynn McCreary, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 14):
 - a. There is a 2nd independent living unit located within the main house. This unit must be eliminated.
 - b. The [accessory apartment] unit measures 373 square feet of habitable space which would allow for the occupancy of two people.
 - c. There is adequate off street parking that would accommodate for least two vehicles parked side by side. There is also a car port and a two car garage attached to the main house.
 - d. A properly functioning, permanently installed stove/oven combination is required.
 - e. The bathroom tiled wall shows signs of deterioration. The cause of the deterioration must be determined and corrected and all resultant damage repaired in a professional, workmanlike manner.
3. Petitioners must comply with the determination of the Housing Code Inspectors as to limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;

4. Petitioners must install standard residential lighting fixtures (low voltage), at ground level along the path leading from Rossdhu Court to the accessory apartment, in accordance with the recommendation of Technical Staff;
5. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
6. 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 a registered living unit;
7. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
8. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: May 9, 2012

Respectfully submitted,



Martin L. Grossman
Hearing Examiner