

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS  
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
(240) 777-6660**

<b>IN THE MATTER OF:</b>	*	
<b>MAXINE HILLARY</b>	*	
	*	Board of Appeals No. S-2835
Petitioner	*	(OZAH No. 12-23)
	*	
Maxine Hillary	*	
For the Petition	*	
*****	*	
Ivan Eloisa	*	
	*	
Department of Housing and	*	
Community Affairs	*	
*****	*	

Before: Tammy J. CitaraManis, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

In Petition No. S-2835, Maxine Hillary seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 8119 Sligo Creek Parkway, Takoma Park, Maryland in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lots 74 and 75, Block 55B, in the B.F. Gilbert Subdivision of Takoma Park. The Tax Account number is 01064006.

On February 28, 2012, the Board of Appeals issued a notice of a public hearing before the Hearing Examiner for May 31, 2012. Exhibit 11(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated May 25, 2012, recommended approval of the special exception, with three (3) conditions. Exhibit 13.<sup>1</sup>

A Housing Inspector from the Department of Housing and Community Affairs (DHCA) inspected the property on April 27, 2012. Housing Code Inspector Ivan Eloisa reported his findings in a memorandum dated May 10, 2012, (Exhibit 12). The inspector found the accessory apartment had 600 square feet of habitable space and as a result, concluded that occupancy in the unit must be limited to no more than two (2) occupants. Exhibit 12.

The hearing went forward as scheduled on May 31, 2012. Petitioner appeared *pro se*. Petitioner executed an Affidavit of Posting (Exhibit 14). Petitioner testified in support of the petition and agreed to meet all the conditions set forth in the Technical Staff Report (Exhibit 13) and the Housing Inspector's report (Exhibit 12). No opposition appeared at the hearing.

The record was held open until June 15, 2012, as required by Board of Appeals Rules of Procedure 7.2.6, because the Technical Staff report (Exhibit 13) was received on May 30, 2012, less than five days prior to the hearing date. It also allowed time for Petitioner to provide a copy of her deed and the Court Reporter to complete the hearing transcript. The record closed on June 15,

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

2012, with no further documents other than Petitioner's deed (Exhibit 16) 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 8119 Sligo Creek Parkway, Takoma Park, Maryland. As described by Technical Staff, "The subject property contains approximately 17,493 square feet of treed land on two triangular shaped lots (Lots 74 and 75; Block 55B of the B.F. Gilbert Subdivision) in the City of Takoma Park." Exhibit 13, p. 3. It is zoned R-60. The property is improved with a one-story single-family detached home with a basement and enclosed carport.

Technical Staff further described the property (Exhibit 13, p. 3):

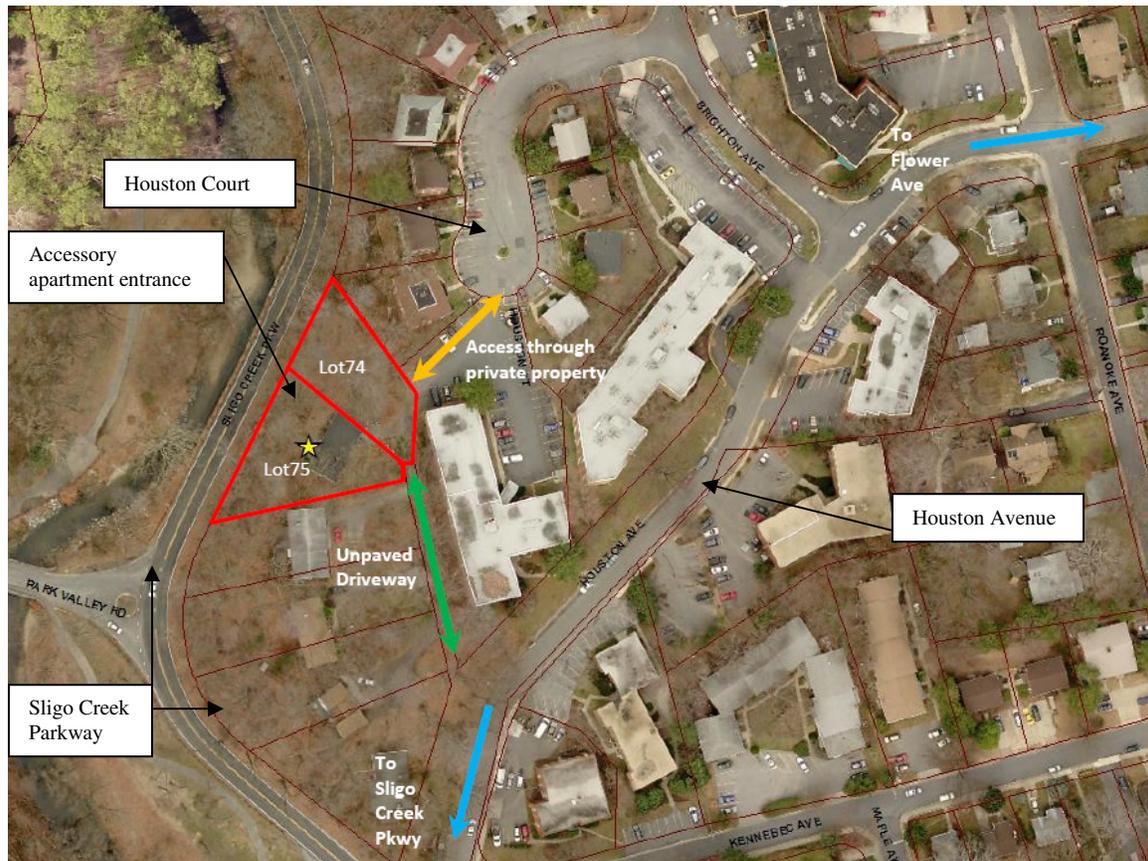
The Maryland Department of Assessments and Taxation<sup>2</sup> [(SDAT)] indicates that the existing dwelling was constructed in 1957 and has an enclosed area of 1,260 square feet, not including the proposed basement accessory apartment unit and the carport that was converted to living space. The carport is separately estimated to have an enclosed area of 392 square feet (assuming 14 feet width and 28 feet length based on survey provided by the petitioner) for a total main living area of 1,652 square feet.

The house is mostly located on Lot 75; the lot line between Lot 75 and Lot 74 runs through the north end of the existing structure on the property, which is an enclosed carport. In this case, since both lots are owned by the petitioner, for zoning purposes related to this petition for an accessory apartment within an existing dwelling, the two lots are considered as one lot.

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<sup>2</sup> The Hearing Examiner takes official notice of the SDAT record for this property.

Technical Staff provided an aerial photograph of the property and immediate area, shown below, (Exhibit 13, p. 5):



Technical Staff reports “[a]lthough the property fronts on Sligo Creek Parkway and has a Sligo Creek Parkway address, steep slopes along the roadway makes access to the property from Sligo Creek Parkway prohibitive. Thus, as shown [above], the subject property and the surrounding and adjacent properties gain local access via Houston Avenue, Brighton Avenue, Houston Court, and regional access via Houston Avenue that extend between Sligo Creek Parkway and Flower Avenue.” Exhibit 13, p. 4. Staff provided close-up photographs of local access to Petitioner’s property from Houston Court (a cul-de-sac off Brighton Avenue) through private property to an

unpaved driveway over a 10-foot alley. The unpaved driveway is located between five single family homes, including Petitioner's property, and a three to four-story low-rise apartment building (Exhibit 13, p. 5):

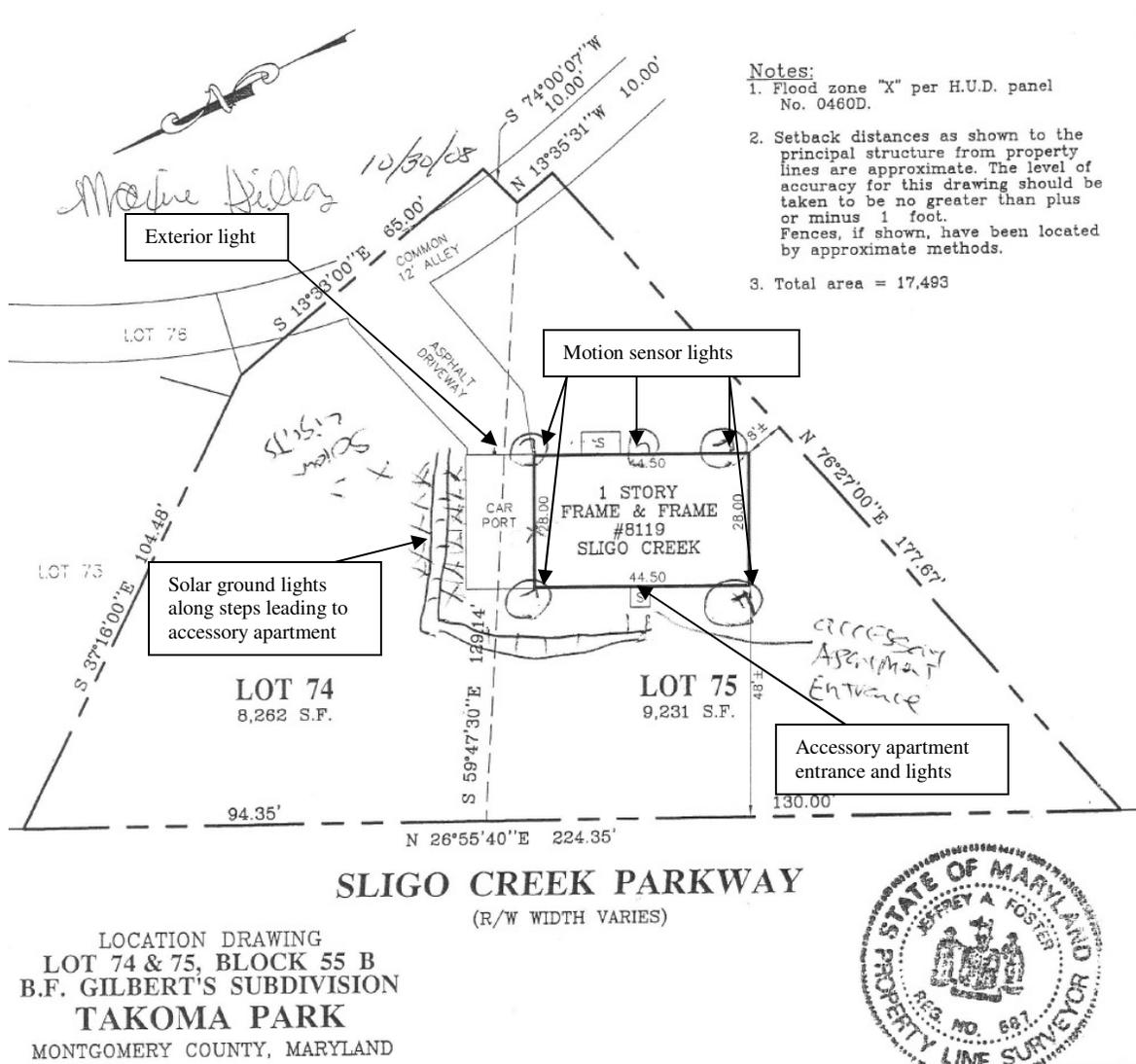


Figure 3: Terminus of Houston Court – Access to single family homes through private property



Figure 4: Unpaved Driveway over the 10-foot alley in front of single family homes

The Site Plan for the property, modified by Petitioner to show the location of the slate steps and walkway to the accessory apartment entrance and existing exterior lighting on the property, is shown below (Exhibit 3):



Technical Staff described the dwelling and topography of the property as follows (Exhibit 13, p. 7):

The house on the property is located on a terraced lot with three distinct levels. The front yard and the unpaved parking area to the side of the house

are off the unpaved driveway to the front and are sited on a flat portion off Houston Court/private access drive aisle. The primary dwelling unit within the house faces the unpaved driveway and occupies the area between the first and second terrace. One story of the house is visible from the unpaved driveway in front and two stories are visible from the rear. A set of steps with hand-rails lead from the front yard of the property, along the northern and western edges of the house, to the accessory apartment's entrance to the rear. These steps are generally not visible from the front of the property.

Varying views of the home can be seen in the following photographs taken from the Technical Staff report (Exhibit 13, pp. 7-11) and from Petitioner's submission (Exhibits 9(b)):

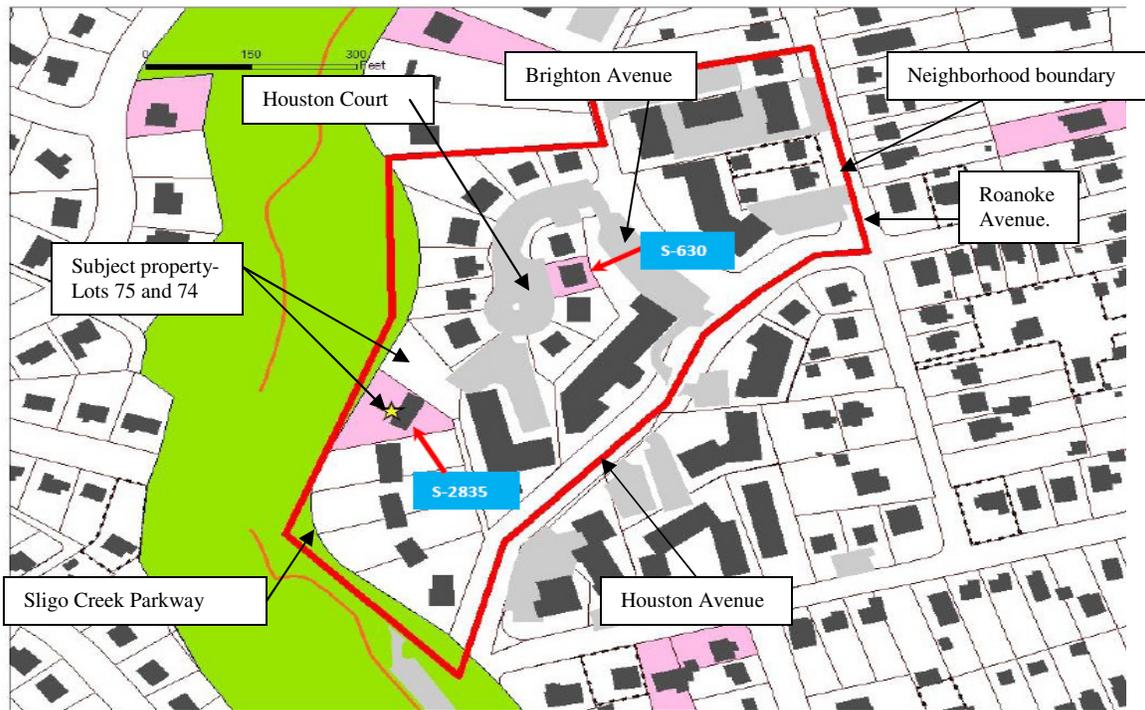


Figure 7: Rear walkway and rear entrance of the dwelling – Entrance to the Accessory Apartment Figure 5: Property towards Sligo Creek Parkway

### B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood as “bounded by Houston Avenue to the southeast, Roanoke Avenue to the east, and Sligo Creek Parkway to the West. Brighton Avenue and Houston Court forms the northern boundary.” Exhibit 13, p. 9. The neighborhood “consists of approximately seven single-family homes, 11 single-family homes with multiple units and six apartment buildings.” Exhibit 13, p. 10. 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 red line on the location map shown below (Exhibit 13, p. 10), has been drawn by Technical Staff to include any



**Figure 8: The Neighborhood Boundary Map**

nearby properties that may be affected by a potential increase in density or traffic.

Technical Staff reports that there is “at least one other special exception (S-630: St. Luke’s House, Inc., permit for a group residential facility for housing exceptional persons) as noted [on the map] within the neighborhood boundary.” Exhibit 13, p. 10.

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

The subject property lies within the geographic area covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. The Plan does not explicitly address the question of accessory apartments, but it does emphasize revitalizing housing and accepting a diversity of housing types in the community. Master Plan, pp. 28-29. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. *Plan*, Appendix B, at p. B-8 (Area D, Map 43).

Technical Staff reports “The subject property is not recommended for any changes in the Master Plan. The Master Plan reconfirms the R-60 zoning for the immediate area. The proposed use reinforces the Plan’s recommendation of retaining the single-family detached character of Takoma Park.” Exhibit 13, p. 12. Hence, Staff concluded that the subject application is consistent with the Master Plan.

The Hearing Examiner agrees with Technical Staff because the Plan supports the R-60 zoning which permits accessory apartments by special exception. In addition, this accessory apartment is not visible from the street and therefore does not change the existing structure’s appearance as a single-family dwelling consistent with the surrounding neighborhood. Since the exterior of Petitioner’s home will not be changed and there is sufficient off-street parking to accommodate the proposed use and main dwelling, it will retain the residential appearance and compatibility sought by the Master Plan. The Hearing Examiner finds that the proposed use is consistent with the *Takoma Park Master Plan*.

### D. The Proposed Use

Petitioner is seeking a special exception to allow an existing accessory apartment located in the walk-out basement of her single-family detached home. According to Petitioner's statement in support of her application (Exhibit 4(a)), the basement was finished but not inhabitable when she purchased the property in October 2008. Petitioner renovated the basement (completed in October 2009) and was issued a permit to use the basement apartment as a Registered Living Unit (RLU).<sup>3</sup> Technical Staff advises that the basement apartment occupies 1,091 square feet out of approximately 2,729 square feet of interior floor area for the home.<sup>4</sup> The apartment is a separate living unit with its own exterior entrance located in the rear of the home (facing Sligo Creek Parkway), as depicted in the following photographs from the Staff report (Exhibit, 13, p. 11), and supplied by the Petitioner (Exhibit 9(f)):



Figure 9: Rear Entrance to the Accessory Apartment; Entrance Lights

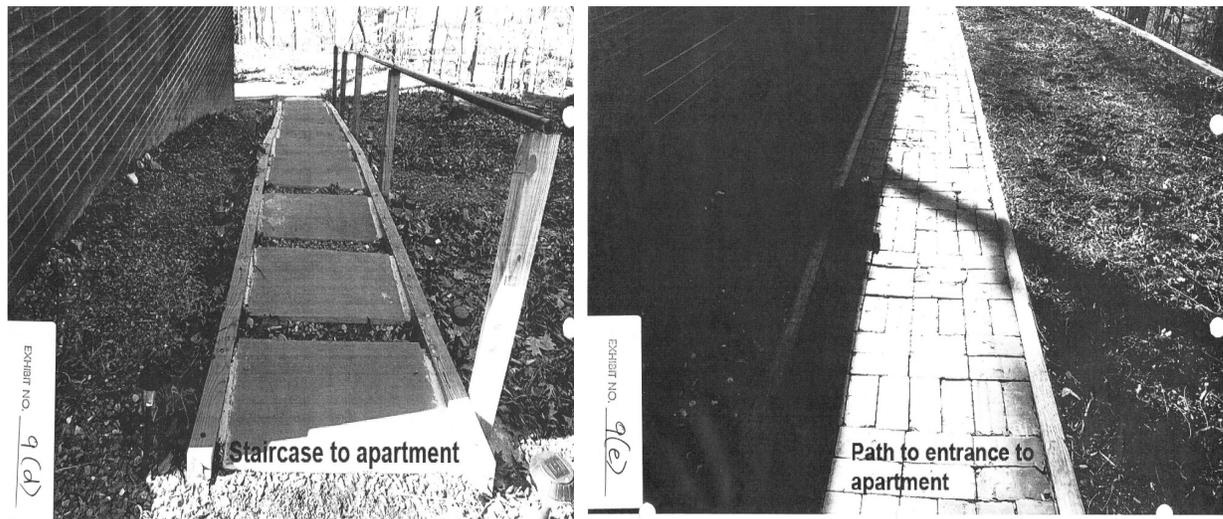
<sup>3</sup> Technical Staff reported: "According to the Montgomery County Department of Housing Community (DHCA) website, housing code enforcement Case No. 105903 is still open for the subject property. Previously, Case No. 104071 was opened on December 15, 2011, for the subject property after the tenant in the basement unit, which had a permit to be used as a Registered Living Unit (RLU), placed a complaint regarding issues in the rental unit. Based on an inspection on December 22, 2011, it was found that the RLU was being used as an accessory apartment and a citation for the violation was issued on January 3, 2012. The basement unit has since been vacated and the Petitioner has applied to the Board of Appeals for a special exception for an accessory apartment. The citation was subsequently dismissed." Exhibit 13, p. 9. The Housing Code Inspector testified that the outstanding code enforcement case is pending the outcome of the present special exception petition. Tr. 76.

<sup>4</sup> Technical Staff estimated the main dwelling and the enclosed carport to be approximately 1,652 square feet in size. Exhibit 13, pp. 3 and 20.

Technical Staff reports (Exhibit 13, pp. 10-11):

A separate entrance to the apartment is located at the rear center of the house and is distinct from the entrance to the main dwelling. The proposed use has the appearance of a rear entry into a single-family home. The accessory apartment will not detract from the appearance of the neighborhood. Adequate lighting, residential in character, is located along the steps leading to the rear of the property. The petitioner has installed motion-activated flood lights and solar ground lights to ensure walking safety and added security for the tenant. Lighting is also located on either side of the apartment's entrance door (see Figure 9).

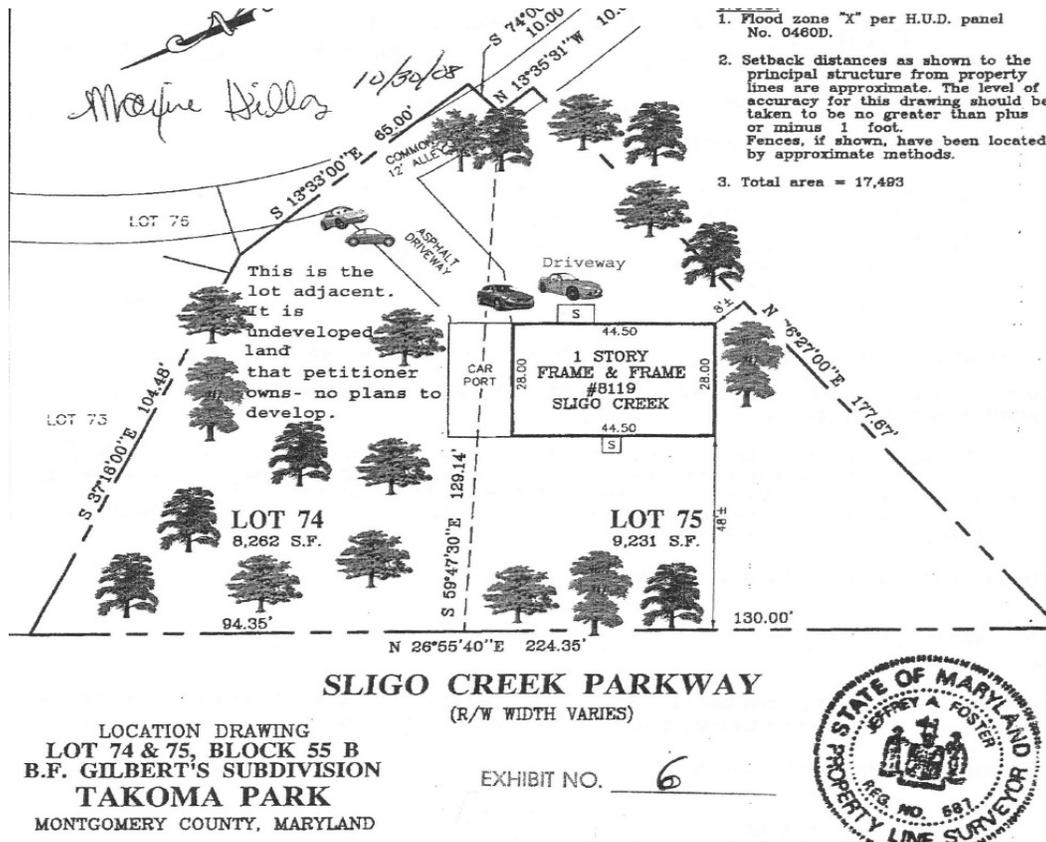
Petitioner provided the following close-up photographs of the slate steps and brick walkway to the accessory apartment entrance (Exhibits 9(d) and 9(e)):



As can be seen on the Site Plan (Exhibit 3), previously shown on page 6 of this report, Petitioner identified the existing exterior lighting for the property as follows: five motion sensor lights; a porch light to right of sliding glass door (Exhibit 9(a)); two light fixtures on both sides of the accessory apartment entrance (Exhibit 9(f)); and solar ground lighting along both sides of the slate steps to the accessory apartment entrance (Exhibit 9(d)). Tr. 18-20. Technical Staff found the lighting to be adequate and residential in character. Exhibit 13, p. 11. Thus, Staff concluded, “The use will cause no objectionable illumination or glare as the provided lighting is residential in

character.” Exhibit 13, p. 17.

The existing landscaping and parking for the property is shown below on the Landscape Plan (Exhibit 6):



Technical Staff reports (Exhibit 13, p. 13):

The plan documents the location of existing trees, vegetation, and other features on the site. The property contains several large trees, terraced areas, and the dwelling unit. No exterior alterations are proposed under the application. There are no landscaping or environmental issues associated with this application. Forest conservation law is not applicable to the subject property as defined in Chapter 22A of the Montgomery County Code. The non-applicability was previously confirmed by M-NCPPC staff on February 2, 2012 [Exhibit 7].

DHCA inspected the property on April 27, 2012, and Housing Code Inspector Ivan Eloisa

reported his findings in a memorandum dated May 10, 2012 (Exhibit 12). The substance of his report is set forth below:

The preliminary inspection was conducted on April 27, 2012. The Accessory Apartment is located in the basement of the house. The issues regarding Accessory Apartment standards are as follows:

1. A GFCI (ground fault circuit interpreter) electrical receptacle in the accessory apartment bathroom must be installed.
2. A smoke detector outside the sleeping area of the basement accessory apartment must be installed.

Note: The total habitable space in the basement accessory apartment measures approximately 600 square feet. It includes one bedroom that measures 136 square feet. The accessory apartment may be occupied by no more than two (2) occupants due to the bedroom space limitations. The gravel driveway can accommodate two vehicles side by side and a third vehicle behind them.<sup>5</sup>

Mr. Eloisa indicated that the bathroom and the kitchen are on the same electrical circuit and the GFCI outlets are located in the kitchen. Therefore, item #1 has been completed. Petitioner testified that she replaced the hard-wired carbon monoxide detectors with smoke detectors. Tr. 66-67.

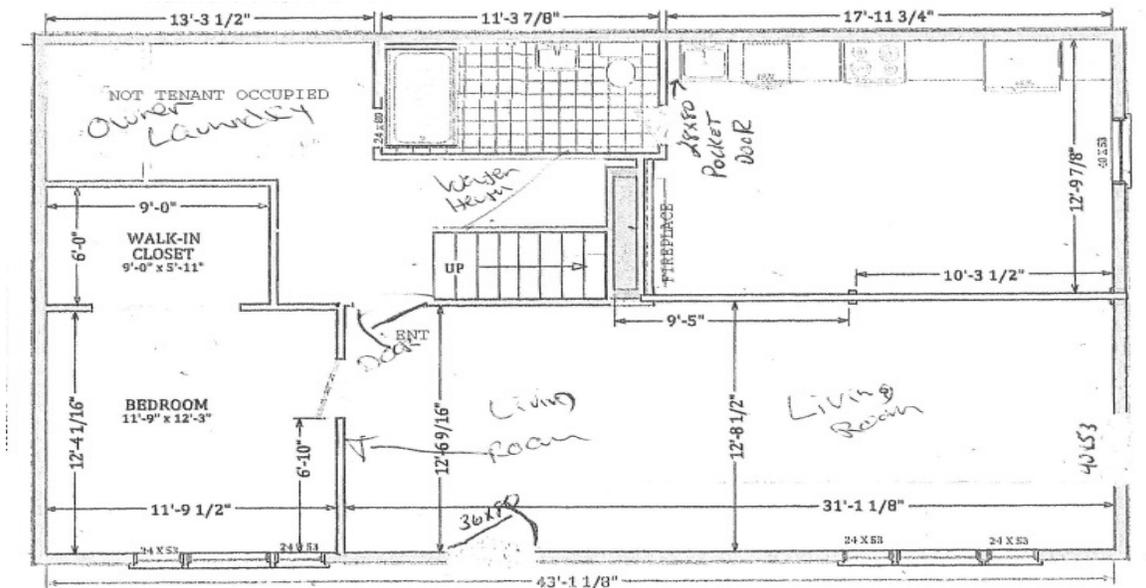
Mr. Eloisa clarified that in addition to the available parking on the gravel driveway located in front of the sliding glass door, the asphalt driveway located near the front of the fence can easily accommodate two vehicles parked side by side. Tr. 73-74. Thus, Mr. Eloisa confirmed Technical Staff's finding that "[p]arking for the main dwelling and the accessory apartment can be accommodated on the two paved parking spaces to the northeast corner of the property and over the unpaved area to the front of the home (which can accommodate at least two to three vehicles)." Exhibit 13, p. 12. Petitioner testified that she parks on the gravel driveway (Exhibit 9(b)), and indicated the tenant will park on the asphalt driveway (paved parking area). Tr. 20-22.

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<sup>5</sup> Mr. Eloisa testified that the initial inspection was on December 22, 2011, based on a complaint from the tenant. Tr. 64. He indicated that as a result, the unit was inspected three times by three different inspectors. Tr. 70.

Based on this information, the Hearing Examiner concurs with Staff's finding that there is adequate off-street parking for the main dwelling and accessory apartment on Petitioner's property.

The overall net floor area of the accessory apartment is approximately 1,091 square feet, 600 square feet of which is habitable, and includes a large living room, kitchen, bathroom and one bedroom.<sup>6</sup> Petitioner provided numerous photographs (Exhibit 15) of the interior of the apartment which includes new wall-to-wall carpets, ceiling fans and energy star appliances (e.g., dishwasher, stacking washer and dryer, built-in microwave, double-door refrigerator). The Floor Plan for the accessory apartment is shown below (Exhibit 5).



Mr. Eloisa commented that the interior of the accessory apartment was nicely done. Additionally, the accessory apartment blends into the neighborhood and would not detract from the residential character of the neighborhood. Tr. 70.

<sup>6</sup> The Housing Inspector indicated that he determined the habitable space based on the measurements of the bedroom (136 square feet), living/dining area (386 square feet) and kitchen (78 square feet). Tr. 68-69.

### **E. Traffic Impacts**

Technical Staff found that “The proposed accessory apartment meets the transportation-related requirements of the Adequate Public Facilities Ordinance (APFO).” Exhibit 13, p. 12.

Transportation Staff reported (Exhibit 13, pp. 25-26):

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

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

#### Policy Area Mobility Review

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

Due to the small scale of the proposed use, the Hearing Examiner has no basis in this record to disagree with the finding of Technical Staff and therefore agrees that the accessory apartment satisfies the LATR and PAMR tests and will have no adverse impact on the area roadways and pedestrian facilities. Exhibit 13, p. 12. There being no evidence in the record to the contrary, the Hearing Examiner so finds.

### **F. Environmental Impacts**

Petitioners do not propose any external changes to the site. Technical Staff advises that the property is exempt from the Forest Conservation Law. Exhibit 13, p. 13. 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, either positive or negative, to the subject petition.

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

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

### **A. Petitioner's Case**

#### Petitioner Maxine Hillary:

Petitioner executed an Affidavit of Posting (Exhibit 14). Petitioner adopted the findings and conclusions in the Technical Staff report (Exhibit 13) as her own evidence and agreed to comply with all the conditions set forth in the report. Tr. 7. Petitioner agreed with the findings and conclusions of the Housing Inspector's report (Exhibit 12) and agreed to meet all the conditions set forth therein. Tr. 8. Further, Petitioner acknowledged she understood and agreed with the Housing Inspector's finding that occupancy is to be limited to no more than 2 unrelated people or a family of two based on a total habitable space of 600 square feet. Tr. 70. Petitioner will occupy the main dwelling. Tr. 44.

Petitioner identified the Site Plan (Exhibit 3), Landscape and Lighting Plan (Exhibit 6), photographs of the property (Exhibit 9 (a)-(i)), and the Floor Plan (Exhibit 5).

Petitioner testified that the one-story home, located on Lot 75, was built in 1957. The carport, a portion of which is located on Lot 74, was added by the former owner. Petitioner subsequently enclosed the carport after she purchased the property in 2008 and uses it as a

sunroom. Petitioner accesses the main dwelling via the sliding glass door to a secure interior door (Exhibits 9(b) and 9(c)), which she identified as her “front door”. Tr. 10-12, 17 and 22-23. Petitioner believes that the original door to the main dwelling was located in the center of the house facing the unpaved driveway off Houston Court and identified on the Site Plan with an “S” inside a box. Petitioner was uncertain what the “S” stood for but believed it indicated an entrance into the home (for the main dwelling and the accessory apartment). Tr. 37-40.

Petitioner indicated she parks her vehicle on the gravel driveway (shown in a photograph identified as Exhibit 9(b)) which can accommodate at least two vehicles. The asphalt driveway, also referred to as the paved area, can accommodate three vehicles. Petitioner testified the accessory apartment occupants will park on the paved area. Tr. 20, 42-43. Petitioner indicated that parking for the property is technically located in the rear of the dwelling, accessed from the unpaved driveway off Houston Court, because access from Sligo Creek Parkway is not allowed. Tr. 27, 34.

Petitioner modified the Site Plan (Exhibit 3) to show the slate steps and walkway to the accessory apartment and the existing lighting for the property. There are five motion sensor lights, a porch light to the right of the sliding glass door, two porch lights at the accessory apartment entrance, and multiple solar ground lights along both sides of the steps to the accessory apartment walkway. Tr. 18-20 and 24-26.

Referring to the Floor Plan (Exhibit 5), Petitioner identified the large living room area and clarified the “owner laundry” room was not included as part of the accessory apartment. Petitioner indicated that the accessory apartment was fully equipped with new energy star appliances, including a stacked washer and dryer unit located in the kitchen. Petitioner provided numerous photographs (Exhibit 15) of the interior of the accessory apartment which she described

in detail. Tr. 46-64. Petitioner indicated she has complied with item #2 (installing a smoke detector) and replaced hard wired carbon monoxide detectors with smoke detectors. Tr. 66.

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

#### Housing Code Inspector Ivan Eloisa:

Housing Code Inspector Ivan Eloisa testified that he inspected the property on December 22, 2011, and April 27, 2012. He reported his findings in a memorandum dated May 10, 2012 (Exhibit 12). He inspected the property in December 2011 based on a complaint from the tenant. At that time, the RLU was being illegally rented out as an accessory apartment. He informed Petitioner she needed to apply for a special exception for an accessory apartment. Tr. 64-65.

Mr. Eloisa determined the 600 square feet of habitable space for the accessory apartment based on the measurements of the bedroom (136 square feet), living/dining room (386 square feet) and kitchen (78 square feet). Tr. 68-69. Mr. Eloisa indicated item #1 listing in his report was complete. He explained that the GFCI outlets in the kitchen are on the same electrical circuit as the bathroom. Since he has not been back to the unit since April, he could not confirm Petitioner's testimony that she installed a smoke detector outside the bedroom. Tr. 66.

Mr. Eloisa clarified that in addition to the available parking for two to three vehicles on the gravel driveway (located near the sliding glass door) the asphalt driveway located near the front of the fence can easily accommodate two vehicles parked side by side. Tr. 73-74. Mr. Eloisa commented that the interior of the accessory apartment was nicely done. Additionally, the accessory apartment blends into the neighborhood and would not detract from the residential character of the neighborhood. Tr. 70. He found the existing lighting was adequate and residential in character and access to the accessory apartment was safe. The installed windows are large and according to the building code. He also explained that the open enforcement case,

noted in the “Site History” section of the Staff report on page 9, is pending resolution of the present special exception petition. Tr. 76.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception if she complies with the recommended conditions. Exhibit 13.

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-1.21 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-1.21. 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 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 13, p. 15):

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

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

Technical Staff found that there are no non-inherent adverse effects arising from the accessory apartment. In support of this conclusion, Technical Staff summarized the evidence as follows (Exhibit 13, p. 15):

The apartment will be located in the basement of the main dwelling and is not identifiable from the street. The apartment will provide adequate space and facilities necessary for an apartment use.

The accessory unit has its own entrance, which is separate from the entry to the main dwelling. The apartment entrance appears typical of a rear entrance to a single-family house, as such it is difficult to distinguish it from any other neighborhood home. The entrance of the accessory apartment will be illuminated consistent with typical residential standards.

Vehicular parking for the accessory apartment will be located either in front of the house or at the two paved parking spaces to the northeast corner of the property.

Based on these findings, Staff concluded (Exhibit 13, p. 15):

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.

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

## B. General Standards

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

### **Sec. 59-G-1.21. General conditions.**

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

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

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(a).

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 zone, is consistent with the goals and objectives of the *Takoma Park Master Plan*.

(4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed special exception would be in harmony with the general character of the neighborhood especially because no structural changes to the home are proposed to accommodate the accessory apartment. It therefore will maintain its residential character. The accessory apartment is fully contained in the basement of an existing dwelling with a separate entrance typical of a rear entrance for a one-family home. Occupancy will be limited to no more than two people and therefore will have only minimal impact on population density. There is sufficient off-street parking for at least four vehicles on the property (two on the gravel driveway and two on the paved area) to accommodate the main dwelling and accessory apartment. Petitioner will park her vehicles on the gravel driveway and the tenants will park their vehicle or vehicles on the asphalt driveway. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There is only one approved special exception (S-630; St. Luke's House, Inc., permit for a group residential facility for housing exceptional persons) and no

other accessory apartment uses within the Staff-defined neighborhood. The Hearing Examiner finds that the addition of the proposed accessory apartment to the neighborhood will not be excessive or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

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

Conclusion: For the reasons set forth in the answer to the previous section of this report (Part IV.B.4), the Hearing Examiner agrees and finds that the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

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

Conclusion: Technical Staff found: “Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, or physical activity. The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 13, p. 17. Since the use will be indoors and residential, the Hearing Examiner finds it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

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

Conclusion: As previously discussed, there is only one approved special exception (S-630; St. Luke's House, Inc., permit for a group residential facility for housing exceptional persons) and no other accessory apartments located within the neighborhood. The Staff-defined neighborhood "consists of approximately seven single-family homes, 11 single-family homes with multiple units and six apartment buildings." Exhibit 13, p. 17. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

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

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

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water,*

*sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that “[t]he proposed special exception will be adequately served by existing public services and facilities.” Exhibit 13, p. 18. The evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:
  - (i) does not require approval of a new preliminary plan of subdivision; and
  - (i) the determination of adequate public facilities for the site is not currently valid for an impact that is the same or greater than the special exception’s impact;then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case will not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory

apartment use would add one additional trip during each of the peak-hour weekday periods. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. For the same reason, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

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

Conclusion: Based on the evidence of record, especially the availability of adequate off-street parking and the limited number of additional trips generated by the special exception, the Hearing Examiner concurs with Technical Staff and finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic. Exhibit 13, p. 18.

### **C. Specific Standards**

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 13), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

#### ***Sec. 59-G-2.00. Accessory apartment.***

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

##### ***(a) Dwelling unit requirements:***

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

Conclusion: Only one accessory apartment is proposed.

- (2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
- (i) *The lot is 2 acres or more in size; and*
  - (ii) *The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The accessory apartment is located in the basement of an existing one-family detached dwelling and therefore shares a wall in common, as required for a lot of this size (under one acre).

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

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

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

Conclusion: The house was built in 1957. Exhibit 13, p. 3. 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 of the dwelling (facing Sligo Creek Parkway). The entrance, according to Staff, “has the appearance of a typical rear-entry to a single-family home.” Exhibit 13, p. 20. Thus, there will thus 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: Petitioner is not proposing any new construction or modifications to the exterior of the dwelling.

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

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

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate*

*existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.*

Conclusion: The accessory apartment, at 1,091 square feet, 600 square feet of which is habitable, is under the maximum 1,200 square feet restriction. Technical Staff estimated the main dwelling (1,260 square feet), including the enclosed carport (392 square feet) which was converted to living space, to be approximately 1,652 square feet. Exhibit 13, p. 3. Thus, the homes total enclosed floor area is approximately 2,743 square feet. Exhibit 13, p. 20. The Hearing Examiner finds, as did Technical Staff, that the accessory apartment is subordinate to the main dwelling.

**59-G § 2.00(b) Ownership Requirements**

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

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

*(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed (Exhibit 16) submitted into the record, Petitioner purchased the property on October 22, 2008. 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 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: Petitioner submitted a deed (Exhibit 17(a)) dated October 22, 2008, evidencing sole ownership of the subject property. Therefore, the Hearing Examiner concludes that this condition has been met.

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

Conclusion: Not applicable.

#### **59-G § 2.00(c) Land Use Requirements**

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

Conclusion: As discussed in Part II.A of this report, Petitioner's property consists of two side by side lots: Lot 75, which is 9,231 square feet, and Lot 74, which is 8,262 square feet. The combined size of the property is 17,493 square feet, and therefore satisfies this requirement.<sup>7</sup> A chart from the Technical Staff report (Exhibit 13, p. 14) (reproduced on the next page) demonstrates compliance with all development standards for the R-60 Zone.

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<sup>7</sup> For zoning purpose, Petitioner's property is treated as one lot because it consists of more than one record lot and the existing dwelling was constructed prior to October 1967.

Development Standards	Min/Max Required	Proposed	Applicable Zoning Ordinance Provisions
Minimum Lot Area	6,000 sq ft	17,493 sq ft	§59-C-1.322 (a)
Minimum Lot width at street line (To Sligo Creek Parkway)	25 ft	224.35 ft (Lots 74 and 75)	§59-C-1322 (b)
Minimum lot width at front building line (To the front of the house)	60 ft	≈100 ft	§59-C-1322 (b)
<b>Setbacks</b>			
- front	25 ft	≈45 ft	§59-C-1.323
- side	8/18 ft	≈8 ft south side <sup>[2]</sup> ≈50 ft north side ≈58 ft sum of both	§59-C-1.323
- rear	20 ft	≈48 ft	§59-C-1.323
Maximum Building Height	35 ft	18.56 ft	§59-C-1.327
Maximum Building coverage	35%	≈10 %	§59-C-1.328
Maximum Floor area for accessory apartment	1,200 sq ft	1,091 sq ft	§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 discussed in Part III. B of this report, there is only one approved special exception (S-630) and no other accessory apartments located within the Staff-defined neighborhood. Technical Staff found: “The proposed use is a residential use by definition; therefore the special exception will not alter the residential nature of the area. The proposed use will not be visible to the surrounding properties and is consistent with the Master Plan recommendations for retaining the single-family detached character throughout Takoma Park. If granted, the proposed accessory apartment will not result in an excessive concentration of similar uses in the general neighborhood, as this type of land use is most compatible in residential areas.” Exhibit 13, pp. 21-22. The Hearing Examiner

concur with Technical Staff's conclusion and finds that the proposed special exception will not create an excessive concentration of similar uses.

(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 at least four off-street parking spaces available on the subject property. Technical Staff found that “[p]arking for the main dwelling and the accessory apartment can be accommodated on the two paved parking spaces to the northeast corner of the property and over the unpaved area [gravel driveway] area to the front of the home (which can accommodate at least two to three vehicles).” Exhibit 13, p. 12. The Housing Code Inspector confirmed Staff's finding of adequate parking on the property. Exhibit 12; Tr. 73-74. Petitioner confirmed she parks on the gravel driveway and indicated the tenant will park on the paved parking area. Tr. 20-22. The Hearing Examiner finds, therefore, that the minimum requirement of two (2) parking spaces has been met and there is sufficient off-street parking to accommodate the main dwelling and accessory apartment.

#### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in Article 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. D of this Report, the Housing Code Inspector's

report (Exhibit 12) notes certain issues and recommends that occupation of the accessory apartment be limited to no more than two people. As mentioned above, Petitioner has agreed that no more than two people will live in the accessory apartment and she will meet all conditions, including making the repairs, required by the Housing Code Inspector.

## V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Maxine Hillary, BOA No. S-2835, which seeks a special exception for an accessory apartment to be located at 8119 Sligo Creek Parkway, Takoma Park, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by her testimony, representations and exhibits of record;
2. The Petitioner must comply with the conditions set forth in the Memorandum of Ivan Eloisa, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 12):
  - a. A GFCI (ground fault circuit interrupter) electrical receptacle in the accessory apartment bathroom must be installed.
  - b. A smoke detector outside the sleeping area of the basement accessory apartment must be installed.
  - c. The total habitable space in the basement accessory apartment measures approximately 600 square feet. It includes one bedroom that measures 136 square feet.
  - d. The accessory apartment may be occupied by no more than two (2) [people] due to the bedroom space limitations.
  - e. The gravel driveway can accommodate two vehicles side by side and a third vehicle behind them.
3. The Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
4. 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;
5. The Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
6. The 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: July 13, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tammy J. CitaraManis". The signature is written in a cursive, flowing style.

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Tammy J. CitaraManis  
Hearing Examiner