

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS**

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
HECTOR F. MAYSONET

Petitioner

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Hector F. Maysonet
For the Petition

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Board of Appeals Case No. S-2845
(OZAH Case No. 12-35)

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Linda Dunnigan
Opposing the Petition

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Lauren Cary

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Department of Housing and
Community Affairs

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Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2845, filed on May 3, 2012, by Hector F. Maysonet, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in a detached structure located in the rear yard of an existing single-family home located at 13804 Bonsal Lane, Silver Spring, Maryland, on land in the R-150 Zone. The property is identified as Lot 4, Block 16 in the subdivision of Strathmore at Bel Pre, Section 7. The tax account number is 13-01452900.

By notice dated May 11, 2012 (Exhibit 11(b)) the public hearing was scheduled for September 27, 2012. Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued September 19, 2012, recommended approval of the special exception, with conditions. Exhibit 15.¹

The Department of Housing and Community Affairs (DHCA) inspected the property on August 30, 2012. Housing Code Inspector Lauren Cary reported her findings in a memorandum dated September 19, 2012 (Exhibit 14).

A public hearing was convened on September 27, 2012, as scheduled, and Petitioner Maysonet appeared *pro se*. Also testifying was Housing Inspector Cary. The Petitioner executed an affidavit of posting (Exhibit 16). He adopted the findings in the Technical Staff Report (Exhibit 15) as Petitioner's own evidence. T. 5. He also agreed to meet all the conditions set forth in both the Technical Staff Report and the Housing Inspector's report. T. 7.

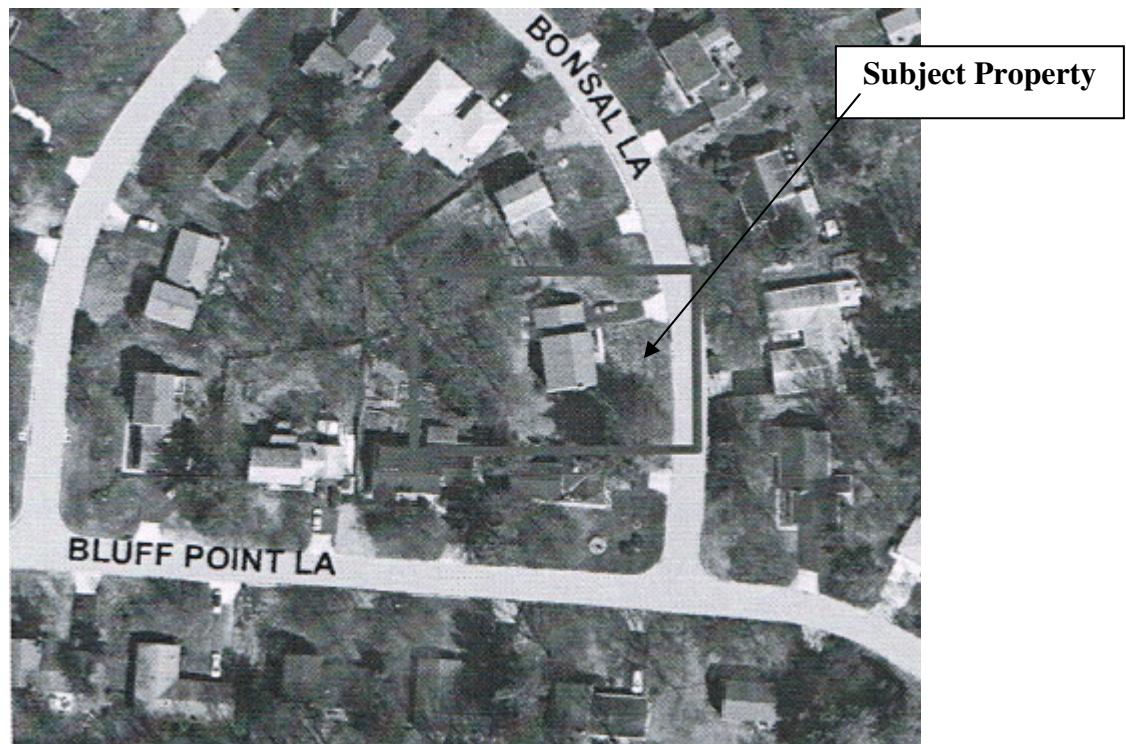
The record was held open till October 8, 2012, to await the filing of the transcript. Based on the evidence submitted, the Hearing Examiner recommends that the petition be granted, with conditions specified in Part V of this report.

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

II. FACTUAL BACKGROUND

A. The Subject Property

Located at 13804 Bonsal Lane, Silver Spring, Maryland, the subject property consists of a 15,079 square foot lot in the R-150 Zone. Technical Staff advises that the property has a long driveway from Bonsal Lane which provides access to the main dwelling. The entrance to the accessory apartment is to the rear of the house. An aerial view of the property, included in the Technical Staff Report, is shown below (Exhibit 15, p. 3):



Technical Staff reports that the existing landscaping consists of bushes bordering the front and both sides of the house, with trees located in rear yard (to the east) and along the southern portion of the site (the side yard of the home). Staff characterized the existing landscaping as "well-maintained." Exhibit 15, p. 2. Records from the Maryland State Department of Assessment and Taxation (SDAT) indicate that the house was constructed in 1970. Exhibit 18. Staff advises that the

main dwelling is approximately 4,024.4 square feet. Exhibit 15, p. 13.

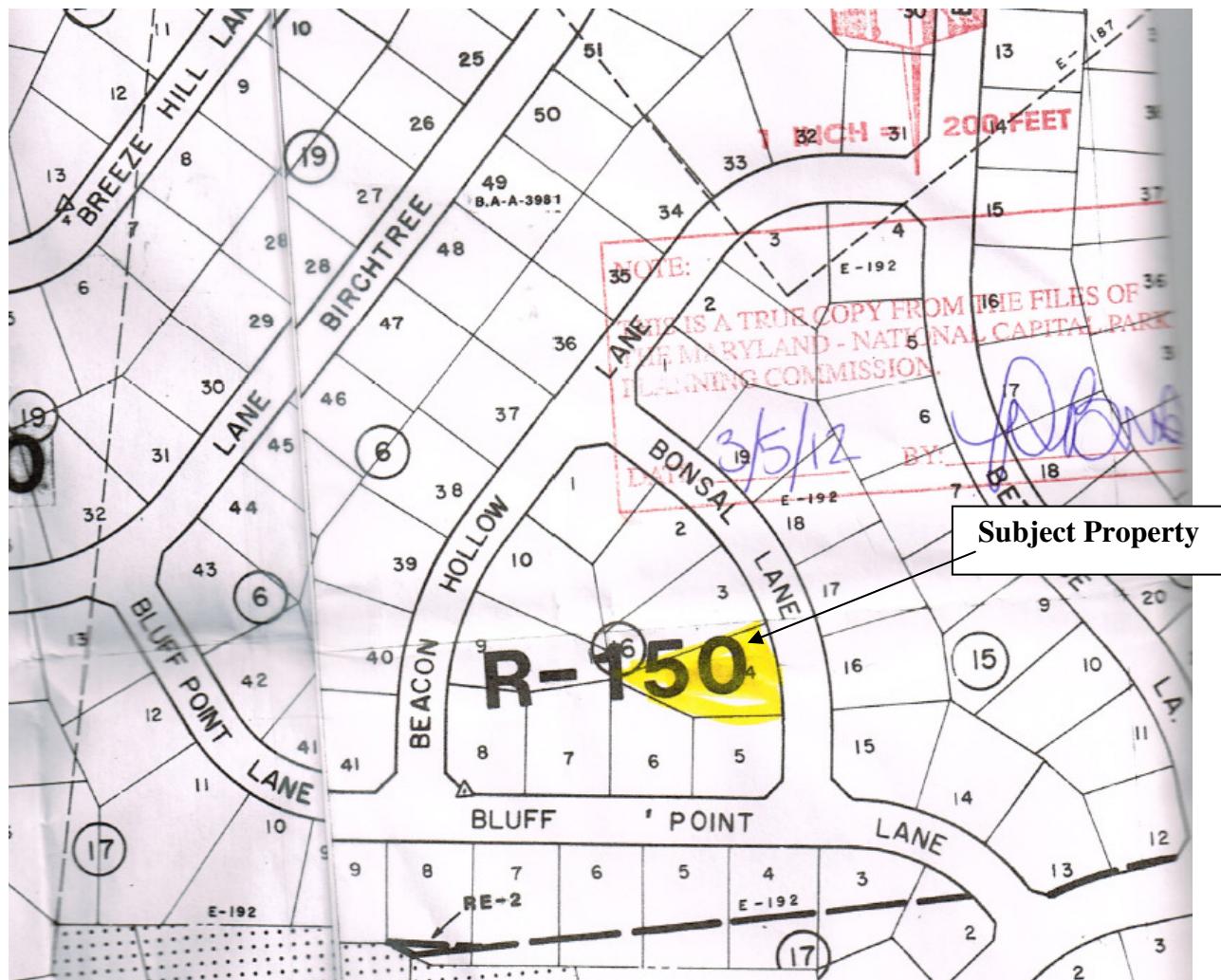
B. The Surrounding Area

The neighborhood boundary is drawn to include nearby properties that may be affected by a potential increase in density or traffic. Staff found that the surrounding area was bounded by Beacon Hollow Lane to the north and west, Bethpage Lane to the east, and Bluff Point Lane to the south, as shown below on an aerial photograph from the Technical Staff Report (Exhibit 15, p. 3):



Having no evidence to the contrary, the Hearing Examiner agrees with this delineation and so finds. Staff did not provide a description of the character of the neighborhood. The Zoning Vicinity Map, however, indicates that the entire neighborhood is within the R-150 Zone (Exhibit 10), a

portion of which is reproduced below. Based upon this evidence, the Hearing Examiner finds that the neighborhood is characterized by single-family detached homes in the R-150 Zone.



Both Technical Staff and DHCA report that there are no other accessory apartments or registered living units in the immediate surroundings. Exhibit 15, p. 2.

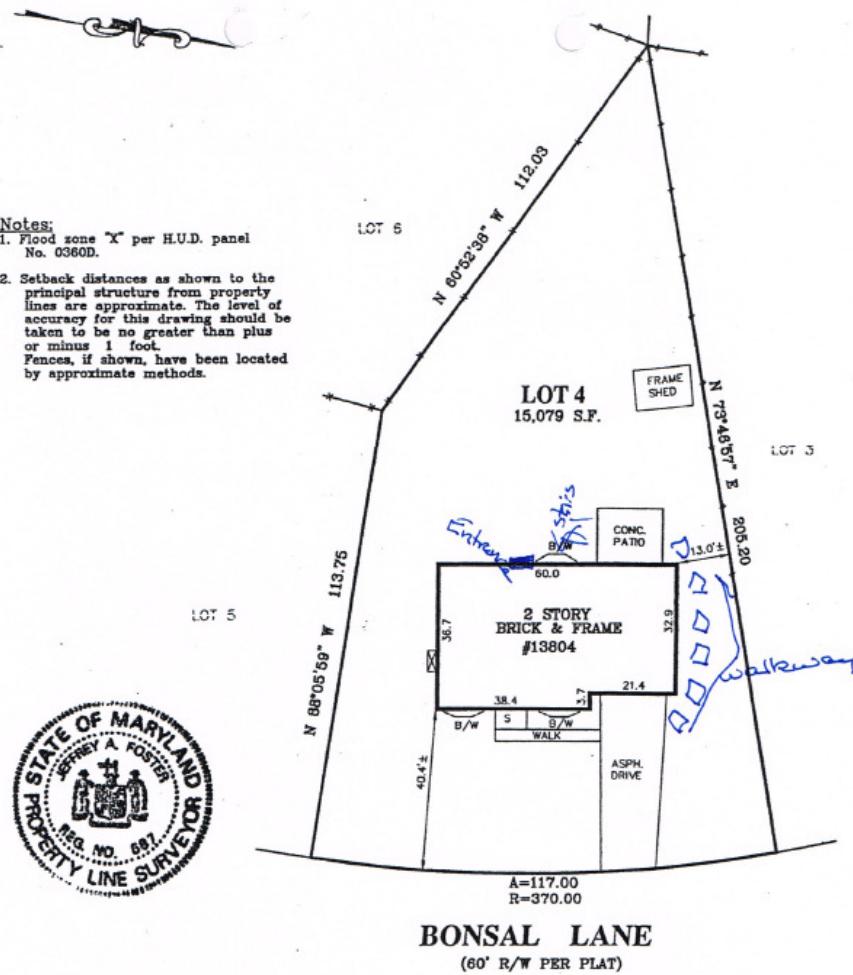
C. The Master Plan

The subject property is within the geographical area covered by the *1994 Aspen Hill Master Plan* (Plan). Exhibit 8. Technical Staff advises that the proposed use is consistent with the goals and objectives of the Plan, which stressed the importance of maintaining the "primarily suburban and

residential character of Aspen Hill.” *Id.* at 3. The Plan’s guidelines for special exceptions sought to avoid an overconcentration of special exception uses and to protect residential uses from incompatible design of special exception uses. *Id.* at 80-81. Staff concluded that because the proposed accessory apartment does not propose any change to the existing single-family home, it meets the goals and objectives of the Plan. Exhibit 15, p. 4. The Hearing Examiner agrees and so finds.

D. The Proposed Use

Petitioner proposes to house the accessory apartment in the basement of the existing home. According to Technical Staff, the apartment was created approximately 3 years ago. Access to the apartment is via a walkway of stone pavers leading from the driveway to a rear patio, as shown on the site plan (Exhibit 4):

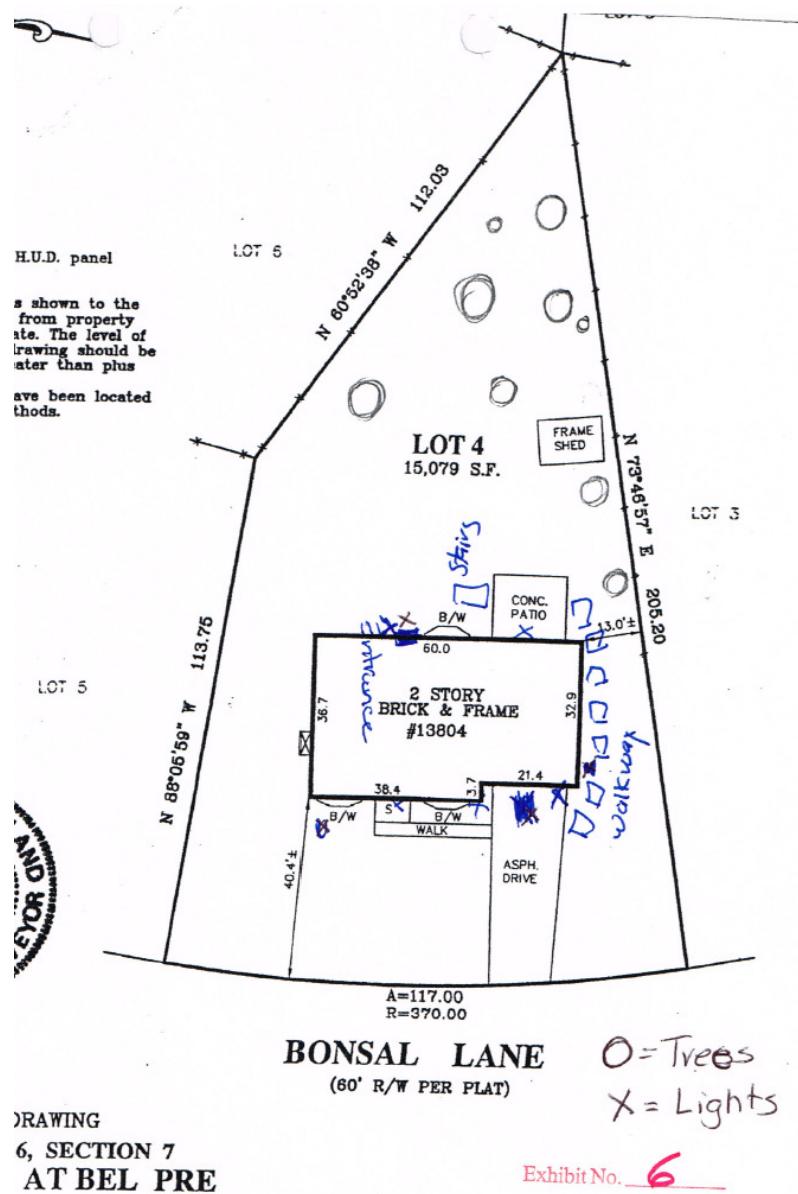


Stairs lead from the patio to the apartment's entrance. Technical Staff and the Housing Inspector both recommended a condition of approval requiring the Petitioner to install a handrail on the stairs leading to the apartment's entrance. Exhibit 15, p. 2; Exhibit 14. A photograph of the entrance to the apartment is shown below (Exhibit 9(b))

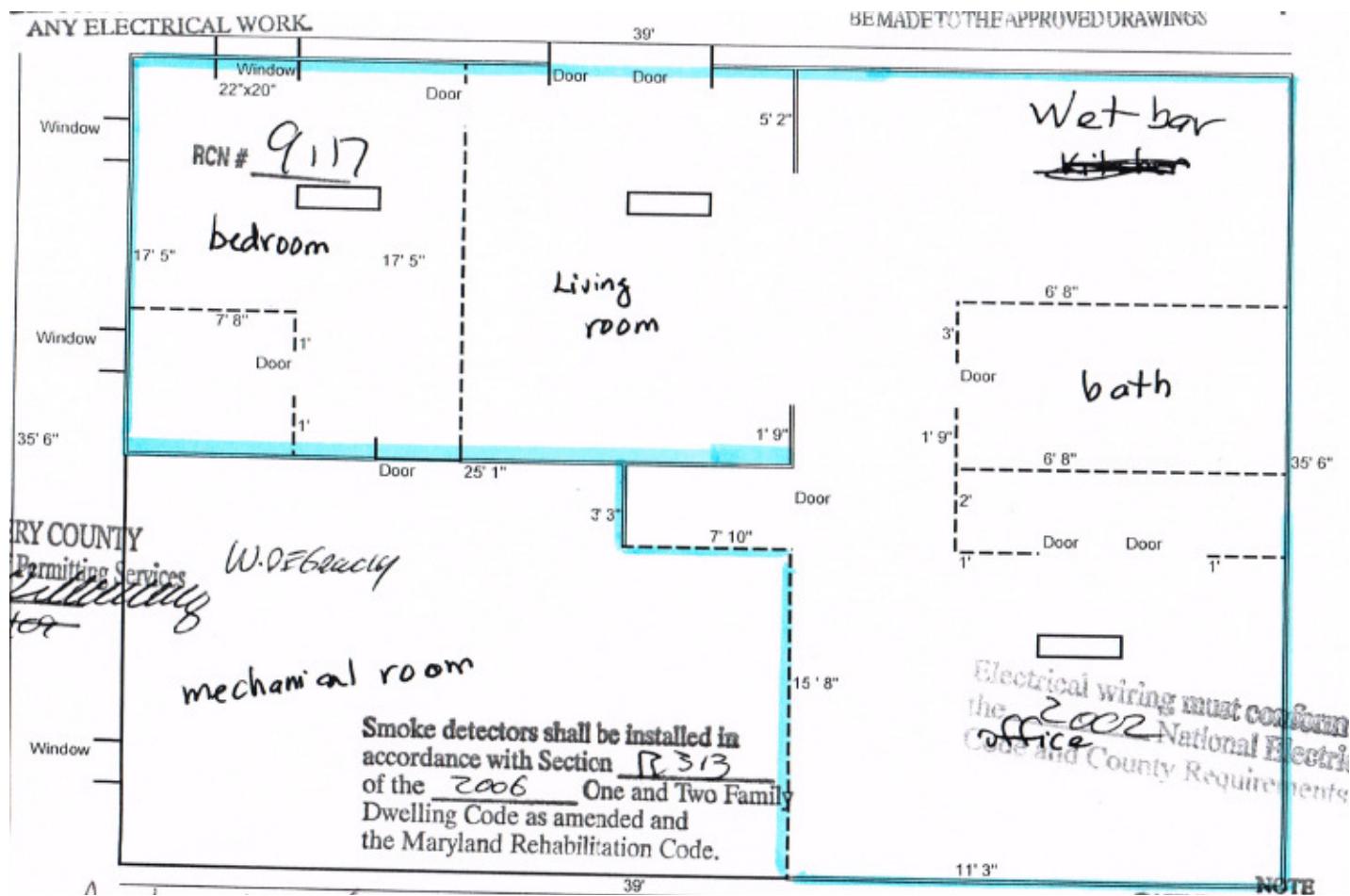


Lighting is located in front of the house, along the walkway, and on the back of the house above and near the entrance. Exhibit 15, p. 2; Exhibit 6, Exhibit 9(b). Technical Staff characterized the lighting as "standard residential lighting". Exhibit 15, p. 2.

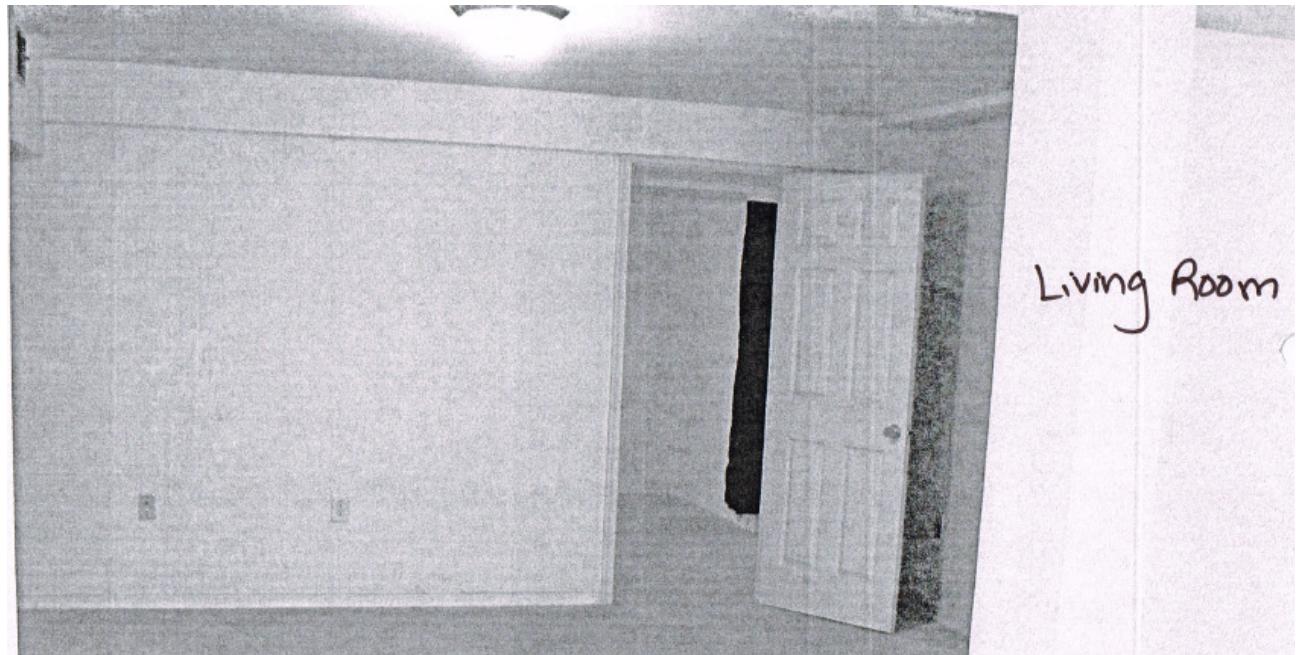
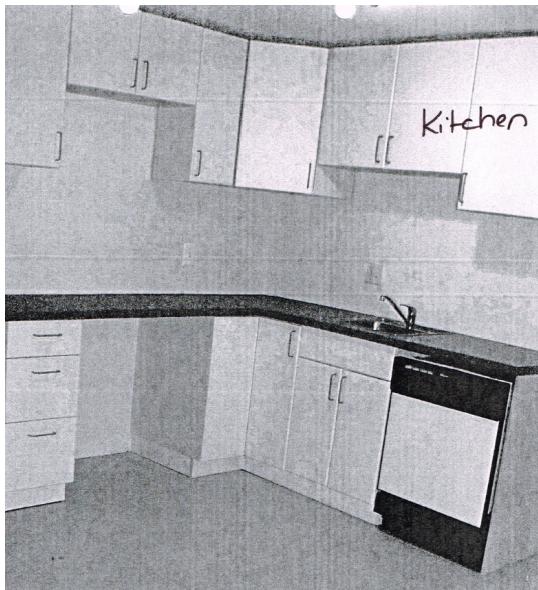
The Petitioner does not plan to add more landscaping to the property. Technical Staff found that the existing landscaping is well-maintained and sufficient to preserve the residential character of the neighborhood. Both the lighting and the landscaping are shown on Petitioner's Landscape and Lighting Plan (Exhibit 6):



According to Petitioner's floor plan, the apartment consists of a bedroom, bathroom, and wet bar. There is an additional room which may be used as an office (but not a bedroom) should the tenant wish to do so. The Petitioner's floor plan (Exhibit 5(b)) is shown below:



The room labeled as an "office" may not be used as a bedroom because the window is sufficiently sized for egress under the Housing and Building Code regulations. Exhibit 14. The mechanical room shown on the plan will be locked from the inside (preventing entry from the apartment), but is accessible from the main dwelling. Photographs of the interior of the accessory apartment (Exhibit 9(c)-(e)) submitted by the Petitioner are shown on the following page.



Technical Staff determined that the use as proposed meets all of the general and specific standards for the grant of the special exception, provided it complies with the following conditions of approval (Exhibit 15, p. 2):

1. The applicant must occupy one of the dwelling units on the lot on which the accessory apartment is located.

2. The applicant must not receive compensation for the occupancy of more than one dwelling unit.
3. The applicant must provide a deed as proof of ownership at the time of the public hearing.
4. The applicant must adhere to the recommendations of the Department of Housing and Community Affairs.
5. The applicant must install a banister to the stairway in the backyard.

Staff's findings are summarized in detail in Section IV of this Report.

Housing Inspector Cary reports that the unit consists of 715.50 square feet of habitable space, which permits occupancy by 2 unrelated people or a family of no more than 3 people and that the driveway may accommodate 6 off-street parking spaces. Exhibit 14. She further found that the Petitioner would be required to perform the following maintenance/repairs:

1. Must install handrail for steps in the rear of the property.
2. Must install an operable smoke detector outside of Bedroom 1.
3. Must remove all solid waste, including, but not limited to the yard debris, consisting of tree limbs, branches, leaves, and any other debris or rubbish throughout the entire property, and continue to maintain grounds.
4. Bedroom 2 may not be used for sleeping; this room is unfit for human habitation. This room does not contain any windows. *Id.*

E. Opposition

Two neighbors submitted letters opposing this application because, according to them, an accessory apartment is prohibited by the Homeowners Association (HOA) covenants governing the property. Exhibits 12, 13. Ms. Linda Dunnigan appeared at the hearing to oppose the application for the same reason and because she feels that there is an overconcentration of special exceptions, particularly group homes, in the area.

III. SUMMARY OF TESTIMONY

Petitioner's Testimony

1. Mr. Hector Maysonet:

Petitioner adopted the findings of fact and conclusions in the Technical Staff Report as his own testimony and agreed to comply with the conditions of approval in the Housing Inspector's report of September 19, 2012. T. 5, 7. He submitted an Affidavit of Posting and a copy of the deed as proof that he owned the subject property. T. 8; Exhibits 16, 17. He identified the photographs of the subject property which he had submitted. T. 9-11; Exhibit 9. He described features shown on the site plan and added markings to show the existing pathway along the side of the main dwelling leading to a concrete patio, then steps leading to the entrance to the accessory apartment. T. 12-13. He stated that the walkway is not cement, but stone pavers. T. 12. He described the floor plan of the proposed apartment and stated that he understood that the room marked as "office" could not be used for a bedroom. T. 16. The kitchen is now a wetbar and a microwave, but they plan to install a stove. T. 17. There is a doorway from the bedroom to the mechanical room that leads eventually to the main dwelling. This door will be locked from the interior of the mechanical room. T. 20. The mechanical room may still be accessed from the main house. T. 20-21.

There are two spiral lights on each side of the front door of the main dwelling that are 14 watts, equivalent to a 60-watt standard light bulb, according to Mr. Maysonet. T. 23. A motion sensor light is mounted on the house at the corner of the driveway to illuminate the walkway to the apartment. T. 23-24. One 60-watt standard light in the rear above the entrance may be turned on from inside the accessory apartment; the second light is approximately a 100-watt motion sensor light. T. 26-29. According to Mr. Maysonet, the trees on the subject property are mature. They are making no changes to the exterior of the property. T. 29.

Mr. Maysonet testified that the apartment was built in accordance with all county requirements. He and his wife wanted the apartment so that his wife's father could move from Puerto Rico to the United States and live with them, but still have some privacy. T. 31. They

plan to rent the apartment to their family because that is the only option available under the homeowner's association covenants. T. 35.

2. Ms. Elizabeth Vasquez: Ms. Vasquez identified and authenticated the photographs submitted with the petition. She described the site plan (Exhibit 4), the Landscape Plan (Exhibit 6), and the floor plan (Exhibit 5(b)). She concurred with Mr. Maysonet's testimony. T. 8-30.

Opposition

Ms. Linda Dunnigan:

Ms. Dunnigan opposed the petition because the neighborhood is a single-family neighborhood and their homeowner's association covenants prohibit the use. T. 35. She is concerned because, according to her, there are already a dozen group homes in the area. She assumed that the permit would be valid even after the home is sold. She's concerned because right now, he plans to rent it to family, but that could change in the future. There is a lot of traffic from the group homes and many Metro buses for employees to travel to and from the group homes. In her opinion, there is no need for more traffic from rental units. Many of the group homes are either disabled individuals, seniors, or both and have a lot of caretakers visiting the homes. T. 36-37.

When asked about the exact number of group homes in the area, Ms. Dunnigan stated she could not provide the information because different County agencies track different types of group homes. Even though she knows that the proposed use will not have an employee, it will have additional traffic. T. 39. She is also concerned about the fact that it may be rented to a non-family member because that provision is difficult to verify. T. 40-41. She did not think, however, that the use would impact the existing residential appearance of the neighborhood. T. 42.

Housing Code Inspector Lauren Cary :

Housing Code Inspector Lauren Cary testified that she inspected the premises on August 30, 2012, and that her findings are set forth in her report of September 19, 2012 (Exhibit 14). Ms. Cary found that the apartment has slightly over 715.5 square feet of habitable space, and that occupancy must be limited to two unrelated persons or a family of up to three persons. Tr. 43. According to her, the lot consists of 15,079 square feet and may accommodate six vehicles off-street. She testified that the Petitioner must install a handrail on the steps in the back yard leading to the accessory apartment. In addition, she stated that a smoke detector must be installed outside of the bedroom. The Petitioner must remove all solid waste, including lawn debris, and must maintain the ground. Finally, the room labeled as an “office” on the floor plan may not be used for sleeping because there are no windows or exit doors. T. 43-44.

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 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 they comply with the recommended conditions (Exhibit 15).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as the Petitioner complies 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 15, p. 6):

- (1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall with the main unit;
- (2) the provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the Building Code;

- (3) provision of a separate entrance and walkway and sufficient exterior lighting;
- (4) provision of sufficient parking;
- (5) the existence of an additional household on the site;
- (6) additional activity from that household, including the potential for additional noise.

The Hearing Examiner agrees with Staff's conclusion, but would add that the additional activity listed in item (6) above includes characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with the fact that slightly more persons will occupy a single-family lot. 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 concluded as follows (Exhibit 15, p. 6):

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

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-150 Zone, pursuant to Code § 59-C-1.31.

- (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 within the geographic area covered by the *1994 Aspen Hill Master Plan*. As discussed in Part II. C. of this report, a primary objective of the Master Plan is to retain the area's primarily suburban, residential character. It also sought to avoid an overconcentration of special exceptions in the area. Technical Staff concluded that the accessory apartment would not adversely affect the residential character of the neighborhood because no exterior alterations are proposed and advises that there are no other special exceptions in the surrounding area. Exhibit 15, pp. 3, 8. Based on this evidence, the Hearing Examiner agrees with Technical Staff and finds that the proposed accessory apartment is consistent with the 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: Technical Staff concluded that the proposed use will be in harmony with the existing character of the neighborhood, which consists of single-family homes in the R-150 Zone. Staff based its conclusion on the fact that no exterior alterations are proposed and the property will retain its existing residential character. Exhibit 15, p. 7. Staff also concluded that there is adequate off-street parking and that existing traffic conditions will not be adversely affected, as did the Housing Inspector. *Id.* at 4. The Hearing Examiner agrees with Staff's conclusion that the use will be in harmony with the neighborhood and so finds.

- (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 determined that the proposed apartment would meet this standard because no exterior alterations are proposed. Exhibit 15, p. 8. The Hearing Examiner also notes that the Staff found the lighting to be "standard residential lighting" and all parking may be provided off-street, although on-street parking is also available. *Id.* at 4. The Hearing Examiner agrees with Technical Staff that this standard for approval has been satisfied.

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

Conclusion: Technical Staff advises that there are no special exceptions in the defined neighborhood. Exhibit 15, p. 8. While Ms. Dunnigan indicated that there is an over-concentration of special exceptions in the area, and in particular group homes, she was unable to provide details as to the number or location of these group homes and whether they were special exception uses. T. 38-39. Based on the evidence presented, the Hearing Examiner agrees with Technical Staff and finds that this criterion for approval has been met.

- (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: Technical Staff determined that the proposed use will cause only a marginal increase in activity in the neighborhood and would not have any adverse impacts on residents, visitors, or workers in the area. Exhibit 15, p. 8. The evidence supports this conclusion and the Hearing Examiner so finds.

- (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 15, pp. 8-9), 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 does 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). Technical Staff performed these reviews and determined that the proposed use meets these standards, as does the Hearing Examiner. Exhibit 15, Attachment 1. Staff concluded that the proposed use will generate one additional weekday morning and evening peak hour trip. As a result, a traffic study is not required to satisfy LATR and PAMR mitigation is not required because the use generates fewer than three new peak hour trips. Exhibit 15, p. 5.

(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: Staff reports that there are no sidewalks on Bonsal Lane, although nearby Hewitt Avenue does have sidewalks. Staff concluded that the minimal amount of additional activity would not adversely impact the surrounding area. Based on the evidence in this case, the Hearing Examiner agrees and so finds.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 15), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

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

(a) Dwelling unit requirements:

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

Conclusion: Only one accessory apartment is proposed.

(2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1, 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 will be in the basement of the existing single-family home and therefore will have one party wall in common with the main dwelling.

(c) 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 a single-family home.

(3) *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: SDAT records indicate that the main dwelling was constructed in 1970, well more than 5 years ago. Exhibit 18.

(4) *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 will not violate any of the provisions of this subsection and compliance with this section will be made a condition of approval of the special exception.

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

Conclusion: The entrance to the detached structure is in the rear of the existing home and is accessed by a pathway to the side of the main dwelling. Based on this evidence, the Hearing Examiner finds that this requirement has been met.

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

Conclusion: No external modifications or improvements are proposed by Petitioner. Exhibit 15.

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

Conclusion: The accessory apartment as proposed will have the same address as the main dwelling. Exhibit 15, p. 17.

(8) *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: Technical Staff reports that the main dwelling is 4,024.4 square feet while SDAT

records indicate that the main dwelling is 2,736 square feet. Exhibit 15, p. 13; Exhibit 18. Technical Staff does not state the basis for their conclusion that the main dwelling is 4,024.4 square feet. Because the Housing Inspector reports that the proposed apartment is 715 square feet (less than half of either size for the main dwelling), the Hearing Examiner finds it unnecessary to resolve this issue and finds that accessory apartment is subordinate to the main dwelling and is less than 1,200 square feet.

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 unit on the property and their occupancy will be made a condition of this special exception approval.

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

Conclusion: According to Petitioner's deed (Exhibit 17), Petitioner purchased the property in May of 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: The Petitioner is the owner of the property. Exhibit 17.

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

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

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

Conclusion: The subject property consists of 15,079 square feet, and therefore satisfies this requirement. Technical Staff advises that the use complies with all development standards in the R-150 Zone, as set forth in the following table from the Technical Staff Report (Exhibit 15, p. 9):

Table 1: Applicable Development Standards – R-150 Zone (1968)

Development Standards	Required	Provided
Maximum Building Height: (59-40)	35 feet	±19 ft.
Minimum Net Lot Area: (59-40)	15,000 sq. ft.	15,079 sq. ft.
Minimum Front Yard Setback: (59-40)	30 ft.	±40 ft.
Minimum Side Yard Setback: (59-40)	10 ft. one side, 25 ft. sum of both sides	±13' one side, ±36' sum of both sides
Minimum Rear Yard Setback: (59-40)	25 ft.	± 130 ft.
Maximum Building Coverage: (59-40)	30%	14%

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

Conclusion: Technical Staff advises that there are no other accessory apartment special exceptions in the neighborhood. Based on this evidence, the Hearing Examiner finds this requirement has been met.

(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 previously discussed, there is a long driveway which, according to the Housing Inspector, may accommodate six vehicles and according to Technical Staff may accommodate at least two vehicles off-street. Exhibits 14, 15, p. 19. Hearing Examiner finds that this standard has been met.

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 repairs or maintenance that must be made to the apartment. Petitioner has agreed to perform these items and to comply with directives of the Housing Code Inspector. Tr. 5-6.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Hector F. Maysonet, BOA No. S-2845, which seeks a special exception for an accessory apartment located at 13804 Bonsal Lane, Silver Spring, Maryland, be GRANTED, with the following conditions:

1. The Petitioner are bound by their testimony, representations and exhibits of record;
2. The Petitioner must comply with the conditions set forth in the Memorandum of Lauren Cary, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 14), requiring the following repairs and maintenance be performed prior to occupancy of the accessory apartment:
 - a. Must install a handrail for the steps in the rear of the property.
 - b. Must install an operable smoke detector outside of Bedroom 1.
 - c. Must remove all solid waste, including, but not limited to the yard debris, consisting of tree limbs, branches, leaves, and any other debris or rubbish throughout the entire property, and continue to maintain grounds.
 - d. Bedroom 2 [labeled the “office” on the Petitioner’s floor plans (Exhibit 5(b))] may not be used for sleeping; this room is unfit for human habitation. This room does not contain any windows.
3. No more than two unrelated individuals or a family of three may occupy the accessory apartment;
4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
6. 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: October 19, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynn A. Robeson".

Lynn A. Robeson
Hearing Examiner