

**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:	*	
DANIEL SHEEHAN	*	
	*	
Petitioner	*	Board of Appeals No. S-2867
Daniel Sheehan	*	(OZAH No. 13-16)
For the Petition	*	
*****	*	
Robert Goff	*	
Department of Housing and	*	
Community Affairs	*	
*****	*	

Before: Tammy J. CitaraManis, Hearing Examiner

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

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND	4
A. The Subject Property and Its Current Use	4
B. The Surrounding Neighborhood.....	7
C. The Master Plan	8
D. The Proposed Use	9
E. Traffic Impacts	14
F. Environmental Impacts.....	15
G. Community Response	15
III. SUMMARY OF THE HEARING	15
A. Petitioner’s Case	15
B. Public Agency Testimony	17
IV. FINDINGS AND CONCLUSIONS	18
A. Standard for Evaluation	19
B. General Standards	21
C. Specific Standards	27
D. Additional Applicable Standards	34
V. RECOMMENDATION	34

I. STATEMENT OF THE CASE

In Petition No. S-2867, Petitioner, Daniel Sheehan, seeks approval of a Special Exception under Zoning Ordinance §59-G-2.00 to allow an accessory apartment on property located at 13202 Holdridge Road, Silver Spring, Maryland, in the R-60 (Residential, One-family, Detached) Zone. The legal description of the property is Lot 16, Block C, in the Greenwood Knolls Subdivision. The tax account number is 01316128.

On December 21, 2012, the Board of Appeals issued a notice of public hearing before the Hearing Examiner for March 28, 2013. Exhibit 13(b). Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report dated March 20, 2013, recommended approval of the special exception with five (5) conditions. Exhibit 19.¹ As noted in the report, Technical Staff found that the proposed application met the development standards of the R-60 Zone, including the 8 foot minimum side yard setback. Exhibit 19, p. 9. In an e-mail dated March 22, 2013, Technical Staff submitted the following explanation as a supplement to the March 20, 2013, Staff report (Exhibit 20)²:

There is a discrepancy between the side yard setback on the location [drawing], 7.8 ft, and the side yard setback in the staff report, 8 ft. Staff concluded that the side yard setback was 8 ft after measuring the distance with an engineering scale rule at a 1 [inch] = 30' scale. By using the symbol “±” before the 8 ft staff acknowledge that there is a margin of error to consider when using the staff report measurements.

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

² The Hearing Examiner requested this information in order to determine whether a variance from the side yard setback was needed. The disclaimers on the location drawing clearly indicate that the setback distances are approximate and the level of accuracy “should be taken to be no greater than plus or minus 1.0 Foot.” Exhibit 4. The location drawing also “does not provide for the accurate identification of property boundary lines. . . .” *Id.* The existing board-on-board fence is located on the location drawing by “approximate methods” and presumably, is along the inside of the property line. The level of accuracy and approximate location of the fence and setback distances may account for the four inch discrepancy between the side yard setback shown on the location drawing and as reported in the Technical Staff report. Given this information and Technical Staff’s on-site visit to the property to measure the side yard, the Hearing Examiner finds there is sufficient evidence to support Technical Staff’s finding that Petitioner’s special exception meets the development standards of the R-60 Zone, including the minimum side yard setback. Thus, the Hearing Examiner finds that a variance from the side yard setback is not necessary in this case.

The Department of Housing and Community Affairs (DHCA) inspected the property on March 7, 2013. Housing Code Inspector Robert Goff (Mr. Goff) reported his findings in a memorandum dated March 13, 2013. Mr. Goff reported that the accessory apartment is 582.12 square feet in size with 426.69 square feet of habitable space.³ Based on the habitable space, Mr. Goff concluded that no more than two unrelated persons or a family of two can occupy the accessory apartment. Exhibit 16. DHCA submitted a memorandum dated March 7, 2013, from Ada DeJesus, Licensing and Registration Unit, reporting there are no accessory apartments or registered living units (RLU's) in the direct vicinity of Petitioner's property. Exhibit 17.

The hearing went forward as scheduled on March 28, 2013, and Petitioner, Daniel Sheehan, appeared *pro se*.⁴ Petitioner's wife, Heather Fagan, was present at the hearing but did not testify. Tr. 4. Petitioner testified in support of the petition and adopted the findings and conclusions set out in the Technical Staff Report (Exhibit 19) as his own evidence and agreed to meet all the conditions set forth in Staff's report. Petitioner reviewed the Housing Code Inspection report (Exhibit 16) and agreed to comply with the conditions and issues noted in the report including completing the necessary improvements and repairs to the unit. Tr. 9-10.

Petitioner executed an Affidavit of Posting (Exhibit 21). Petitioner submitted a copy of his Deed (Exhibit 11) with his special exception application. During the hearing, Petitioner identified the photographs of his house (Exhibit 9), the Floor Plan (Exhibit 5), modified Site

³ Petitioner estimated the accessory apartment was 544 square feet in size which is what was reported in the Technical Staff report. Exhibits 3 and 19. During the hearing, Petitioner accepted Mr. Goff's determination as to the size (582.12 square feet) and habitable space (426.69 square feet) for the accessory apartment. Tr. 33.

⁴ In a joint letter from OZAH and the Board of Appeals dated March 11, 2013 (Exhibit 15), Petitioner was advised that the new standards and licensing procedures for accessory apartments were scheduled to take effect on May 20, 2013. As a result, he was given the option to withdraw his pending application and wait for a new hearing date or to proceed with the scheduled hearing date. Petitioner elected not to withdraw his pending application and indicated he wanted to proceed with the March 28, 2013, hearing date. Exhibit 18.

Plan (Exhibit 4) and Landscape and Lighting Plan (Exhibit 6). The Housing Code Inspector, Robert Goff, also testified and amended his report. Tr. 42-44. No opposition appeared at the hearing.

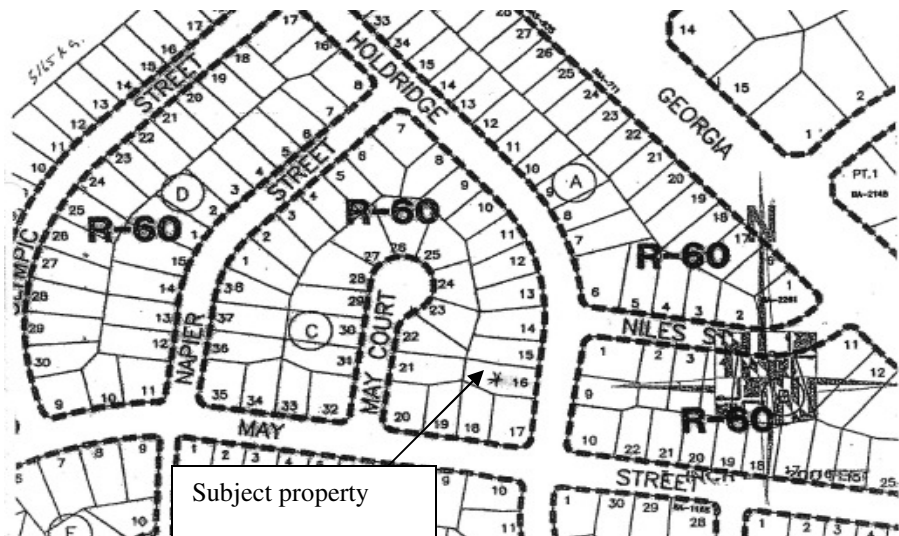
The record was held open until April 4, 2013, to give time to the Court Reporter to complete the hearing transcript. The record closed as scheduled with no further documents being received.

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 13202 Holdridge Road, Silver Spring, Maryland, in the Greenwood Knolls Subdivision. It is zoned R-60. The property is a 7,800 square foot interior lot located on the west side of Holdridge Road just north of its intersection with May Street, as shown below on a Zoning Map of the area (Exhibit 17(a)):



The lot is improved with a one-story split level single-family dwelling with a basement. The dwelling was built in 1955 with an enclosed area of 1,716 square feet. Exhibit 14. Vehicular access to the property is from a driveway off Holdridge Road. A slate walkway off the driveway provides access to the main dwelling entrance. The accessory apartment entrance is located on the south side of the dwelling. A second slate walkway from the front sidewalk and along the south property line provides direct access to the accessory apartment entrance. Photographs of the front and side views of the property, taken from the Technical Staff report (Exhibit 19, Attachment 6), are shown below:



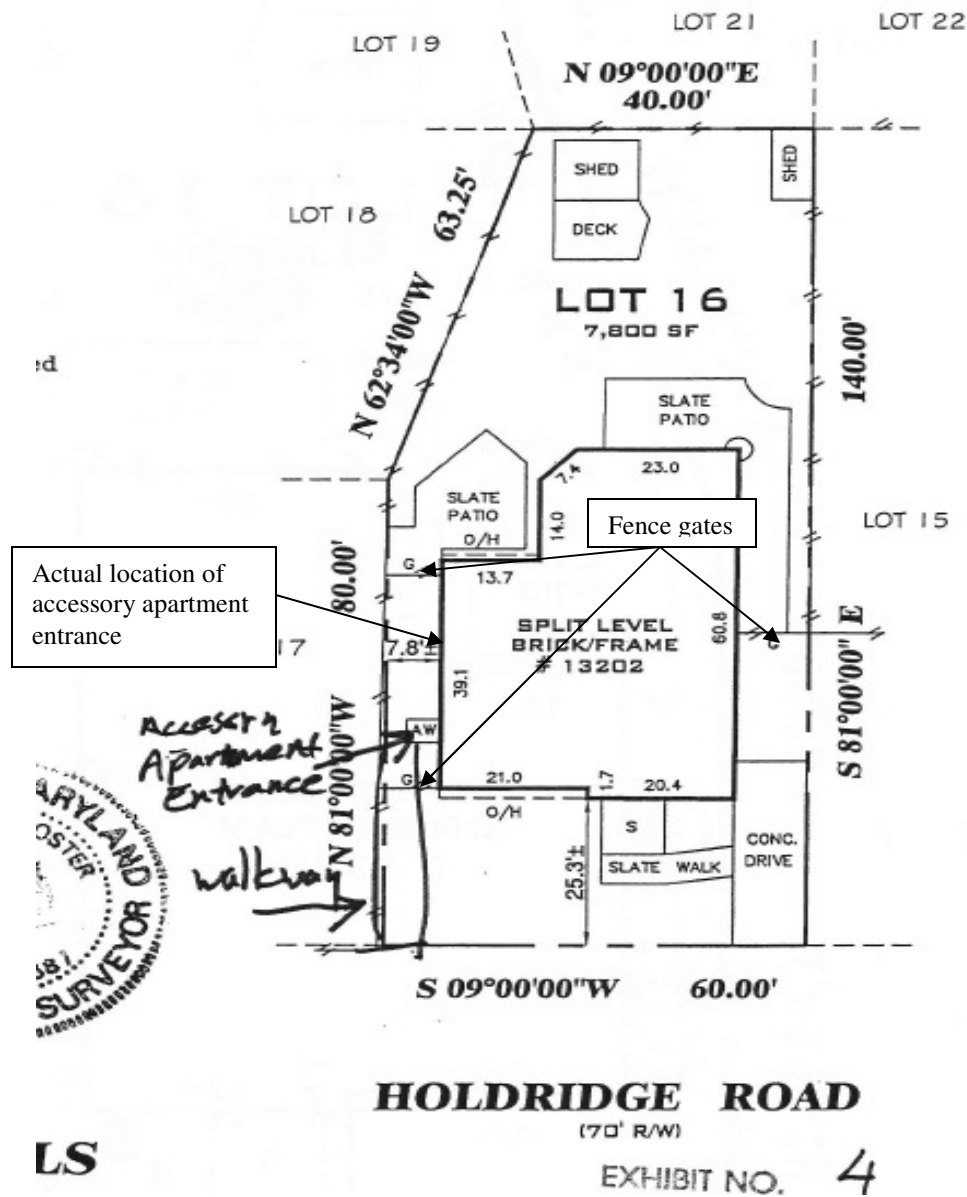
Left
side entrance



Light
over
entrance

Left + side entrance
to accessory apartment

The Site Plan (Exhibit 4) modified to show the general location of the accessory apartment entrance and slate walkway is shown below:⁵



⁵ Petitioner mistakenly identified the accessory apartment side bedroom window ("AW") as the entrance. As can be seen in the photographs of this area shown on the previous page of this report, and on the Landscape and Lighting Plan (Exhibit 6) shown on page 11 of the report, the accessory apartment entrance is actually located more towards the southwest corner of the dwelling and just before the fence gate into the rear yard.

B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood, which consists of approximately 90 one-family detached homes in the R-60 Zone, as generally bound by Napier Street to the west, Holdridge Road to the east and southeast including properties located between Niles Street and May Street and Valleywood Drive and Valleywood Court to the south and southwest. Exhibit 19, p. 2. Having no evidence to the contrary, the Hearing Examiner accepts Staff's definition of the general neighborhood. The neighborhood boundary, which is depicted with a solid line on the location map shown below (Exhibit 19, p. 3), has been drawn by Technical Staff to include any nearby properties that may be affected by a potential increase in density or traffic:

Staff Defined Neighborhood Boundary



Based on a combined reading of the reports from Technical Staff (Exhibit 19) and DHCA (Exhibit 17), there are no other special exception uses in the neighborhood.

The Hearing Examiner concurs with Technical Staff's conclusion that the addition of an accessory apartment special exception use at the subject property will not result in an excessive concentration of similar uses or adversely affect the residential character of the neighborhood.

C. The Master Plan

The subject property lies within the geographic area covered by the *Master Plan for the Communities of Kensington-Wheaton*, approved and adopted in April 1989 (Amended 1990). Technical Staff advises that there are no Master Plan recommendations relevant to this site. However, Technical Staff found the proposed accessory apartment was consistent with the following Land Use and Zoning Goals and objectives stated on page 28 of the Master Plan (Exhibit 8): 1) to protect and stabilize the extent, location, and character of existing residential and commercial land uses; and 2) to maintain the well established low-to medium-density residential character which prevails over most of the planning area. Exhibit 19, p. 3.

The Hearing Examiner concurs with Technical Staff because the Master Plan supports the R-60 zoning in which accessory apartments are a special exception use. The accessory apartment entrance is located on the south side of the property and is not visible from the street. The only proposed exterior modifications are those required by Technical Staff (e.g., standard residential lighting to illuminate the walkway) and DHCA (e.g., modify one of the bedroom windows to meet standards for egress window necessary for habitation and emergency exit). Thus, the single-family dwelling will retain the residential appearance and compatibility sought by the Master Plan. Accordingly, the Hearing Examiner concurs

with Technical Staff and finds that the proposed use is consistent with the *Master Plan for the Communities of Kensington-Wheaton*.

D. The Proposed Use

The Petitioner is seeking a special exception to allow an existing one-bedroom accessory apartment located in the basement of his split-level one-story house. Petitioner testified that the accessory apartment was in existence when he purchased the property in 2004.⁶ Tr. 10. Mr. Goff reported that the accessory apartment is 582.12 square feet, 426.69 square feet of which is habitable space. Exhibit 16. Based on the habitable space, no more than two people may occupy the unit.

According to the Maryland Department of Taxation and Assessment (SDAT) records for the property, the enclosed floor area for the one-story split-level dwelling is approximately 1,716 square feet.⁷ Based on this information, the Hearing Examiner agrees with Technical Staff that the accessory apartment is subordinate to the main dwelling. Exhibit 19, p. 12.⁸

Technical Staff reports (Exhibit 19, p. 2):

The accessory apartment's main entrance is on the [south] side of the house behind the gate to the backyard. A slate walkway connects the entrance to the sidewalk in front of the property on Holdridge Road.

The landscaping on the property is well-maintained and includes an

⁶ Petitioner testified that he purchased the property with an "in-law" suite which included a full kitchen and one bedroom. He assumed the unit complied with the building code and that the prior owners had obtained the required permits for the construction of the basement apartment. The only change he has made to the unit is to update the kitchen appliances. The unit was previously occupied by a friend who has since moved out. The unit is currently vacant. Exhibit 3; Tr. 10-12.

⁷ Petitioner testified that there are two levels on the south side of the house and one level on the north side. The accessory apartment is located in the basement or lower level of the two levels located on the south side. Tr. 14.

⁸ Technical Staff reported that the enclosed floor area for the dwelling was 4,290 square feet. Exhibit 19, p. 12. However, there is nothing in the record to support this calculation which the Hearing Examiner believes is a typographical error. Even with an enclosed floor area of 1,716 square feet as reflected in the SDAT records (Exhibit 14), the measurements of the accessory apartment made by the Housing Code Inspector confirm that it is approximately 582.12 square feet which is clearly subordinate to the main dwelling unit.

abundance of vegetation. Flowers and shrubs can be seen throughout both the front and back yards. There are a variety of trees on the property including, Evergreen, Dogwood and Japanese Maples. Most of the trees are in back of the property as is a small pond.

There is adequate lighting around the apartment's main entrance but insufficient lighting around the slate walkway leading to the apartment. Staff recommends additional lighting around the walkway as a condition of approval.

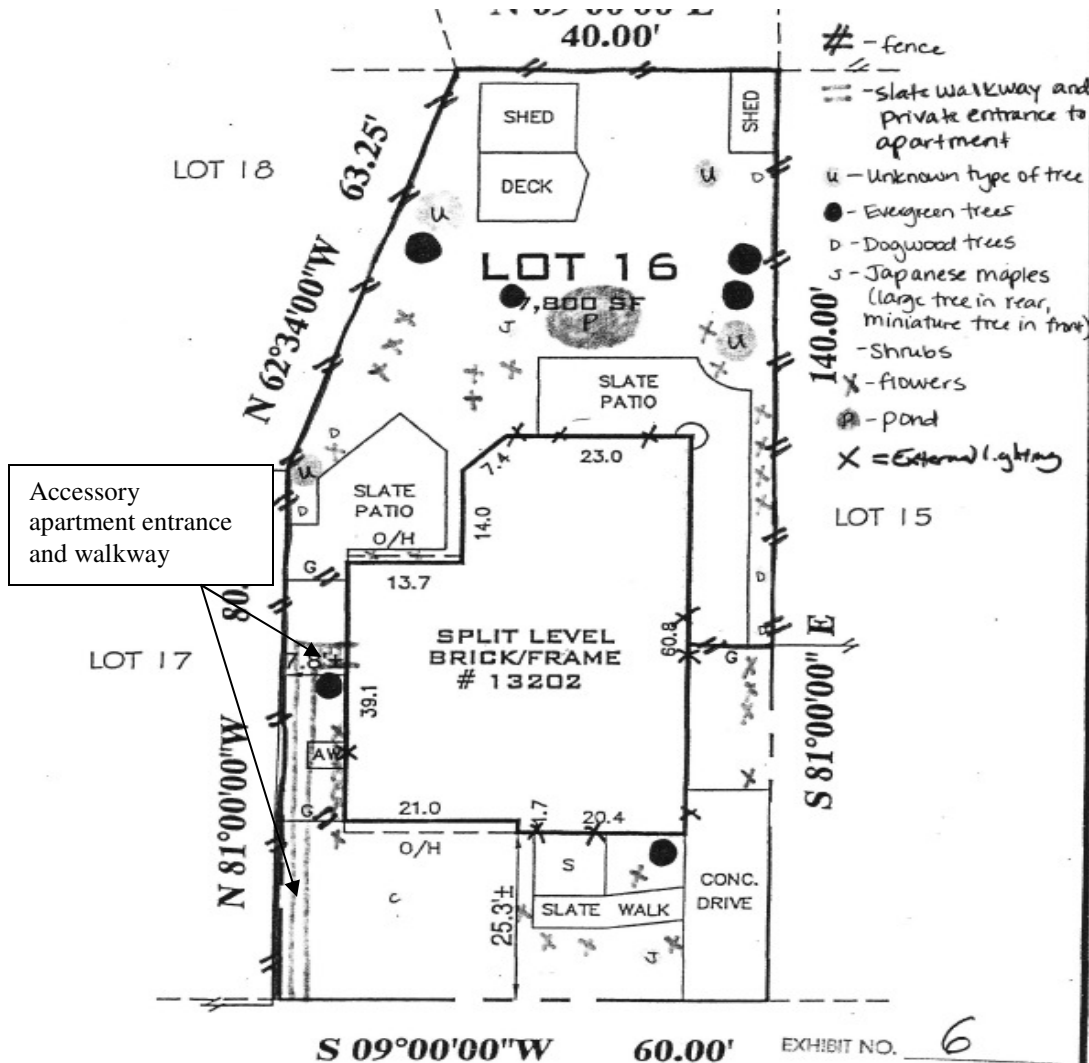
Photographs of the accessory apartment entrance and walkway can be seen on page 5 of this report. The accessory apartment entrance is separate and distinct from the main dwelling entrance and located on the southwest corner of the dwelling just before the fence gate into the rear yard. The entrance is protected by an overhang supported by two pillars and screened by a large evergreen tree. Thus, Technical Staff found that the entrance is not visible from the street and that "[t]he appearance of a single-family dwelling is preserved." Exhibit 19, p. 12. The Hearing Examiner agrees.

The exterior lighting for the dwelling includes standard residential light fixtures at the main dwelling entrance, in the rear and along the north side of the dwelling. Petitioner noted a flood light on the northeast corner of the house illuminates the driveway. A photosensitive light fixture located in the center of the ceiling of the overhang illuminates the accessory apartment entrance. Petitioner will install a standard residential light fixture (motion sensor) to the southeast corner of the dwelling or low-voltage ground pathway lights to illuminate the walkway as a condition of approval.⁹

The Hearing Examiner agrees with Technical Staff that the addition of standard residential lighting to illuminate the walkway to the accessory apartment entrance "will be compatible with the surrounding neighborhood." Exhibit 19, p. 12.

⁹ Mr. Goff testified that he contacted Technical Staff and confirmed that the installation of low-voltage ground pathway lights was an acceptable alternative to installing an exterior light fixture on the side of the house. Tr. 21.

The Landscape and Lighting Plan (Exhibit 6) modified to show the existing exterior lighting, landscaping and the location of the accessory apartment entrance and walkway is shown below:

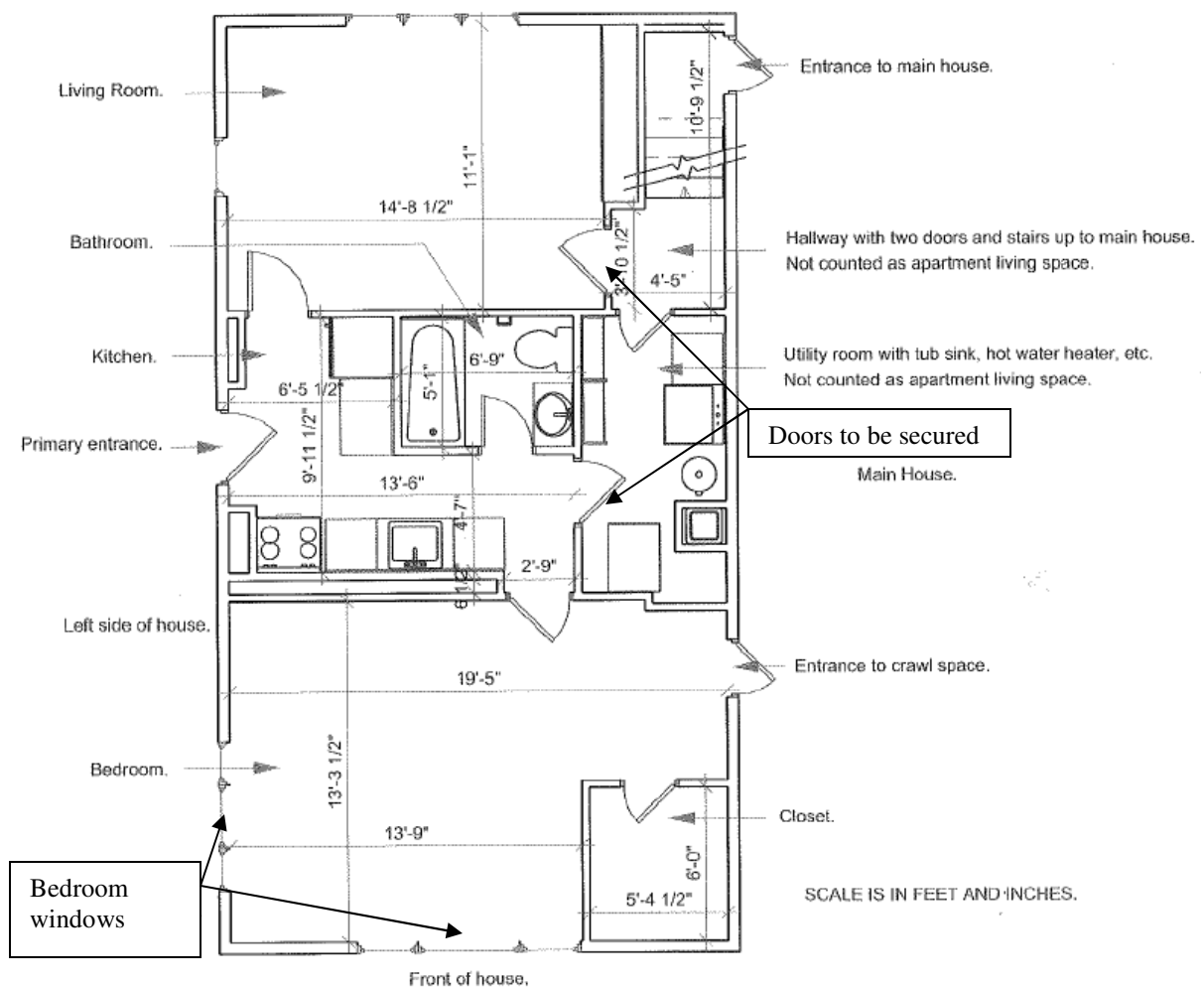


Technical Staff reports (Exhibit 19, p. 9):

The proposed special exception meets the parking requirement of Article 59-E. The code normally requires two off-street parking spaces for an accessory apartment but allows for fewer spaces if there is adequate on-street parking. The driveway can accommodate one off-street parking space reserved for the homeowner. However, there is adequate on-street parking on Holdridge Road. Therefore, adequate parking exists for the proposed accessory apartment.

Petitioner and Mr. Goff reported that the driveway can accommodate two vehicles parked end to end with ample unrestricted on-street parking along both sides of Holdridge Road. Petitioner noted there is space for at least two parked vehicles directly in front of his house where the walkway to the accessory apartment connects with the front sidewalk. Exhibit 16; Tr. 35-36 and 43. The Hearing Examiner agrees with Technical Staff and finds that “adequate parking exists for the proposed accessory apartment.” Exhibit 19, p. 9.

The existing accessory apartment includes a living room, kitchen, full bath, and one bedroom with a large closet as shown below on the Floor Plan (Exhibit 5):



DHCA inspected the property on March 7, 2013. Housing Code Inspector Robert Goff reported his findings in a memorandum dated March 13, 2013 (Exhibit 16). The substance of his report is set forth below:

The preliminary inspection was conducted on 3-7-2013. The Accessory Apartment is located in the cellar of the house. The issues regarding Accessory Apartment standards are as follows:

1. Install egress window in bedroom. Window must be at least 5 sq feet opening and no more than 44" from floor to window opening. Window must be a minimum height of 24" and a minimum width of 20".
2. Reinstall cover on breaker box.
3. Install romex connector on wires going into breaker box.
4. Repair walkway going to the Accessory Apartment.
5. Install light on left side of house to light up walkway to the Accessory Apartment.
6. The [Accessory Apartment is 582.12 square feet in size]. There is 426.69 [square feet of habitable space.] 2 unrelated people [or a family of 2] can live in the unit.
7. The driveway will accommodate 2 cars [parked] end to end.
8. There is off street parking (No Permit Needed).

Mr. Goff amended his report and added a ninth item requiring Petitioner to secure the interior doors to the utility room and hallway to the main dwelling. Petitioner confirmed that the utility room and hallway to the interior door to the main dwelling are not part of the accessory apartment. Petitioner agreed to secure all the interior doors to these areas with keyed door knobs as required by DHCA. Tr. 27-29 and 42-44.

Mr. Goff clarified that Petitioner only had to modify one of the two bedroom windows to meet the required standards for an egress window (item no. 1). He noted that the existing windows need to be lowered by an inch or two to comply with the 44" maximum height requirement from the floor to the window opening. He noted that because the house is at least six inches off the ground, a window well is not required for either window. Thus, in his opinion, the slight modification of lowering either window by an inch or two will not

alter the residential appearance of the dwelling.¹⁰ Tr. 30-32.

Mr. Goff confirmed that Petitioner can install low-voltage ground pathway lights along the walkway or install an exterior light fixture to the left side of the house to illuminate the walkway (item no. 5). Petitioner was also advised that he would need to obtain an electrical permit to install the light fixture on the side of the house and that the light beam must be focused on the walkway to prevent light intrusion onto the adjacent property. Tr. 21-22. Petitioner testified that he has already completed the repairs to the breaker box (item nos. 2 and 3) and will repair the walkway by replacing a broken slate stone (item no. 4). Tr. 33.

E. Traffic Impacts

Based on a report from Transportation Staff, Technical Staff found: “The proposed special exception meets all transportation-related requirements [and] satisfies the Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR) tests, and will have no adverse impact on area roadways or nearby pedestrian facilities.” Exhibit 19, p. 3.

Transportation Staff reported (Exhibit 19, Attachment 1, p. 2):

Adequate Public Transportation Facilities Review

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

The TPAR test is required for developments located in the K/W Policy Area, because it is inadequate under the Transit Test. A TPAR payment is not required for the proposed accessory apartment because it generates fewer than three new peak-hour trips.

¹⁰ Petitioner indicated that he will likely modify the side window and not the window on the front of the house. However, he needs to consult with a contractor to determine which window will be easier to modify. Tr. 31-32.

Due to the small scale of the proposed use, the Hearing Examiner agrees with Technical Staff that the accessory apartment satisfies the LATR and TPAR tests and will have no adverse impact on the area roadways and pedestrian facilities.

F. Environmental Impacts

Petitioner is not proposing any external changes to the site. Technical Staff advises that: “The property is within the Lower Rock Creek watershed – a Use I watershed. The proposed project does not have any activities proposed within any streams, wetlands, or environmental buffers, and is in compliance with the Environmental Guidelines.” Exhibit 19, p. 5. The property is also exempt from the Forest Conservation Law. *Id.* Based on this evidence, the Hearing Examiner finds that Petitioner’s request will have no adverse environmental impacts.

G. Community Response

There has been no response from the community to the subject petition.

III. SUMMARY OF THE HEARING

Petitioner Daniel Sheehan testified at the public hearing in support of the petition. Petitioner’s wife, Heather Fagan, was present but did not testify. DHCA Housing Code Inspector, Robert Goff, also testified. There was no opposition at the hearing.

A. Petitioner’s Case

Petitioner Daniel Sheehan:

Petitioner executed an Affidavit of Posting (Exhibit 21) and previously submitted a copy of his deed with his special exception application (Exhibit 11). Petitioner adopted the findings and conclusions in the Technical Staff report (Exhibit 19) as his own evidence and agreed to be bound by the conditions of approval stated therein. He also agreed to comply

with the conditions and issues noted in the Housing Code Inspector's report (Exhibit 16).

Petitioner made an opening statement. He reported that he purchased the home in 2004 with a fully furnished "in-law" suite which included a full kitchen and one bedroom. He has not made any modifications to the unit, including the windows, except to update the appliances. The unit is currently vacant. Petitioner assumed that the prior owners had obtained the required permits for the basement apartments until last fall when he was asked by a home inspector to provide a permit. Tr. 7-11.

Petitioner modified the Site Plan (Exhibit 4) to show the location of the accessory apartment entrance and walkway located on the south side of the house. Petitioner's split-level house is one level on the north side and two levels on the south side. The accessory apartment is located in the lower level (basement) of the two levels on the south side. Tr. 12-14. Petitioner testified that the photographs marked as Exhibit 9 accurately depict the front and south side views of his property, including the accessory apartment entrance and walkway. Tr. 15-16.

Petitioner modified the Landscape and Lighting Plan (Exhibit 6) to show the existing exterior light fixtures on the dwelling which includes standard residential light fixtures (40 to 60 watt bulbs) at the main dwelling entrance, in the rear and along the north side of the dwelling. Petitioner identified a flood light on the northeast corner of the house that illuminates the driveway. The accessory apartment entrance is illuminated by a photosensitive light fixture located in the center of the ceiling of the overhang. Petitioner will install either low-voltage ground pathway lights or a light fixture on the side of the house to illuminate the walkway.17-22.

Petitioner reviewed the Floor Plan (Exhibit 5). The accessory apartment entrance is

identified as the “primary entrance” on the plan. He clarified that the utility room and hallway to the interior door to the main dwelling are not part of the accessory apartment. He also noted that the laundry facilities are located in the main dwelling. He will secure the doors to these areas as a condition of approval. Tr. 23-29.

Petitioner reviewed and agreed to comply with the issues noted in Mr. Goff’s inspection report. He will consult with a contractor to determine which bedroom window is easier to modify to meet the standards for an egress window (DHCA item no. 1). He is leaning towards modifying the window on the left side of the house over the window on the front of the house. He has repaired the cable going into the breaker box (DHCA item nos. 2 and 3). He will repair the walkway by replacing the broken slate stone and install standard residential lighting to illuminate the walkway (DHCA item nos. 4 and 5). Petitioner agreed to accept Mr. Goff’s determination as to the size (582.12 square feet) and habitable space (426.69 square feet) of the accessory apartment which will be occupied by no more than two unrelated persons or a family of two. Tr. 29-34.

Petitioner testified that the driveway can accommodate two vehicles parked end to end and there is ample unrestricted on-street parking along both sides of Holdridge Road. There is sufficient space directly in front of his house to accommodate at least two vehicles. Tr. 35-36.

B. Public Agency Testimony

Housing Code Inspector Robert Goff:

Housing Code Inspector Robert Goff testified that he inspected the property on March 7, 2013, and reported his findings in a memorandum dated March 13, 2013. Exhibit 16. He amended his report to add a ninth item that Petitioner must secure the doors between the

accessory apartment and main dwelling (e.g., door off living room into hallway and door off kitchen into the utility room). Tr. 27-29. He clarified that Petitioner only has to provide a keyed door knob and is not required to install a deadbolt. He submitted a copy of the March 7, 2013, memorandum from Ada DeJesus with DHCA Licensing and Registration (Exhibit 17). In his opinion, there is adequate on-street parking and the accessory apartment will not have any adverse effect on the residential character of the neighborhood. Tr. 41-44.

Mr. Goff provided additional testimony during Petitioner's presentation. Specifically, he confirmed that Petitioner can install low-voltage ground lights as an alternate to installing a light fixture on the side of the house to illuminate the walkway. He noted that the room measurements provided on the Floor Plan (Exhibit 5) are correct. Tr. 21-23. He confirmed that Petitioner only has to modify one of the two bedroom windows to meet the standards required for an egress window and that no window well is required because the house is six inches off the ground. He clarified that the actual opening of the window must be a minimum height of 24 inches or larger. In this case, he did not measure the window opening because the height of the window opening exceeded the maximum 44" from the floor by approximately two inches. In his opinion, the lowering of either bedroom window by two inches will not change the residential appearance of the dwelling. Tr. 29-31 and 36-38.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general

and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception if he complies with the recommended conditions. Exhibit 19.

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

A. Standard for Evaluation

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

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory

apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent physical and operational characteristics of accessory apartments (Exhibit 19, p. 5):

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

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

Technical Staff found (Exhibit 19, p. 5):

. . . that the size, scale, and scope of the requested use are minimal, and that any noise, traffic, neighborhood disruption, or environmental impacts associated with the use would be slight. There are no unusual features on the

site. Staff concludes that there are no non-inherent, adverse effects arising from the accessory apartment sufficient to form a basis for denial.

The accessory apartment will be fully contained in the basement of an existing single-family split-level dwelling with its own separate exterior entrance located on the south side of the dwelling. The apartment entrance is typical of a side-entry into a single-family dwelling. Thus, the residential appearance of the single-family dwelling is maintained and compatible with the surrounding neighborhood. There is sufficient parking. Occupancy will be limited to no more than two persons.

Based on these circumstances, and considering size, scale, light, traffic and environment, the Hearing Examiner agrees with Technical Staff and finds that there are no non-inherent adverse effects arising from the proposed accessory apartment warranting denial of this petition.

B. General Standards

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

Sec. 59-G-1.21 General conditions.

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

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

Conclusion: An accessory apartment is a permissible special exception in the R-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 IV. C, below.

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

Conclusion: The subject property is covered by the *Master Plan for the Communities of Kensington-Wheaton*, approved and adopted in 1989 (Amended 1990). Exhibit 8. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned use, an accessory apartment in a one-family detached home located in the R-60 zone, is consistent with the goals and objectives of the *Master Plan for the Communities of Kensington-Wheaton*.

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

Conclusion: The accessory apartment is fully contained in the basement of an existing split-level dwelling with a separate entrance typical of a side-entry into a single-

family dwelling. No exterior modifications or improvements are proposed other than those required by Technical Staff (e.g., illuminate walkway) and DHCA (e.g., modify one of the existing bedroom windows to meet the standards for an egress window necessary for habitation and emergency exit). According to Technical Staff and the Housing Code Inspector, the proposed modifications and improvements will be compatible with the existing dwelling. Exhibit 19, p. 12; Tr. 30-31. It therefore will maintain its residential character. Since occupancy will be limited to no more than two persons, the accessory apartment use will have only a slight impact on population density and result in a modest increase in the intensity of use of the property. The driveway can accommodate one, possibly two vehicles with ample unrestricted on-street parking along both sides of Holdridge Road. Thus, there is sufficient parking to accommodate the main dwelling and accessory apartment use. According to Transportation Staff, the proposed special exception will not have an adverse effect on vehicular traffic or pedestrian access or safety in the immediate area. There are no other accessory apartments in the general neighborhood. Thus, the special exception, if granted, will not result in an excessive concentration of similar uses or change the residential character of the neighborhood. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the surrounding residential neighborhood.

(5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties*

or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

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

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

Conclusion: The accessory apartment use will not cause any objectionable noise, vibration, fumes, odors, dust or physical activity at the subject site especially considering that the use is residential and will be indoors. The existing and proposed standard exterior lighting will be residential in character and will not cause any objectionable illumination or glare. Thus, the Hearing Examiner agrees with Technical Staff and finds that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. Exhibit 19, pp. 7 and 10.

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

Conclusion: Based on a combined reading of the reports from Technical Staff (Exhibit 19) and DHCA (Exhibit 17), there are no other special exceptions within the general neighborhood. The proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone. Thus, the proposed special exception will not alter the predominantly residential nature of the area. The Hearing Examiner concurs with Technical Staff and finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

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

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

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: Technical Staff indicates that the proposed special exception use at the subject site will be adequately served by existing public services and facilities. Exhibit 19, p. 8. The Hearing Examiner finds that the evidence of record supports this conclusion.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in

its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

(B) If the special exception:

(i) does not require approval of a new preliminary plan of subdivision; and

(ii) 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 proposed special exception will not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR). As indicated in Part II. E. of this report, Transportation Planning Staff made such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods (two total trips). Exhibit 19, Attachment 1. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the

requirements of the LATR are satisfied without a traffic study. As reported by Technical Staff, “[a] TPAR payment is not required for the proposed accessory apartment because it generates fewer than three new peak-hour trips.” Exhibit 19, Attachment 1, p. 2. Thus, TPAR 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: The Hearing Examiner concurs with Technical Staff’s conclusion that the proposed use “will have no adverse impact on area roadways or nearby pedestrian facilities.” Exhibit 19. p. 3. Based on the evidence of record, especially the availability of adequate on-street parking and the limited number of additional trips generated by the special exception use, the Hearing Examiner finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 19), 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 split-level detached dwelling and therefore shares a wall in common with the main dwelling, as required for a lot of this size (under one acre).

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

Conclusion: No new addition or extension of the main dwelling is proposed.

- (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 1955. Exhibit 14. 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 covered entrance located on the south side of the dwelling. The covered entrance is not visible from the street because it is located towards the rear southwest corner of the dwelling and is screened by a large evergreen tree. The entrance is distinct and separate from the main dwelling entrance and is typical of a side-entry door into a single-family dwelling. Thus, the Hearing Examiner agrees with Technical Staff and finds there will be no change to the residential appearance of the dwelling.

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

Conclusion: No external modifications or improvements are proposed other than those required by Technical Staff (e.g., illuminate walkway) and DHCA (e.g., modify one of the existing bedroom windows to meet the standards for an egress window necessary for habitation and emergency exit). Exhibits 16 and 19. The Hearing Examiner finds, as did Technical Staff, that the proposed

modifications and minor improvements necessary for habitation and safe access to the accessory apartment entrance will be compatible with the existing dwelling and surrounding properties.

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

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

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.*

Conclusion: Based on the information Petitioner provided in his Statement in support of the Petition (Exhibit 3), Technical Staff reported that the accessory apartment is 544 square feet in size. The Housing Code Inspector measured the unit during the preliminary inspection on March 7, 2013, and determined that the accessory apartment is actually 582.12 square feet in size, 426.69 square feet of which is habitable space. Exhibit 16. Thus, it is well below the 1,200 square foot maximum for an accessory apartment. According to the SDAT records (Exhibit 14) for the property, the enclosed floor area for the one-story split level dwelling is 1,716 square feet. Technical Staff reported the enclosed floor area for the dwelling was 4,290 square feet. However, there is nothing in the record to support this calculation which the Hearing Examiner believes is a typographical error. Based on an enclosed floor area of 1,716 square feet,

the Hearing Examiner finds that the proposed accessory apartment is subordinate to the main dwelling.

59-G § 2.00(b) Ownership Requirements

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

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

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

Conclusion: According to the deed submitted into the record (Exhibit 11), Petitioner purchased the property on October 29, 2004. The one-year rule has therefore been satisfied.

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

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

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

Conclusion: The deed (Exhibit 11) submitted into the record reflects that Petitioner is the sole owner 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: The subject property is in the R-60 Zone which permits an accessory apartment as a special exception use. The subject lot is approximately 7,800 square feet in size and therefore satisfies the minimum lot size requirement. Technical Staff found that the subject property conforms to all applicable development standards of the R-60 Zone. The following table (shown on the next page), taken from the Technical Staff report and slightly modified to show the actual size of the accessory apartment and a column for the Applicable Zoning Provision, summarizes and demonstrates compliance of this special exception request with the relevant development standards for the R-60 Zone. Exhibit 19, p. 9. Based on the evidence of record, the Hearing Examiner finds that the proposed special exception request conforms to all applicable development standards of the R-60 Zone.

Development Standards	Required	Provided	Applicable Zoning Provision
Maximum Building Height	35 feet	25 feet or 2 stories	§59-C-1.327
Minimum Net Lot Area	6,000 sq. ft.	7,800 sq. ft.	§59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	±60'	§59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	±60'	§59-C-1.322(b)
Minimum Setback from Street	25 ft.	±25.3'	§59-C-1.323(a)
Minimum Side Yard Setback	8 ft. at one side, 18 ft. sum of both sides	±8' one side, ±18' sum of both sides	§59-C-1.323(b)(1)
Minimum Rear Yard Setback	20 ft.	±55'	§59-C-1.323(b)(2)
Maximum Building coverage	35%	28%	§59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft. or less than 50% of GFA	582.12 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 previously discussed, Technical Staff and DHCA reported there are no other accessory apartments located in the general neighborhood. Exhibits 17 and 19. Because the proposed use is a residential use by definition, and permitted by special exception in the R-60 Zone, the Hearing Examiner concurs with Technical Staff and finds that the addition of the proposed special exception to the neighborhood will not create an excessive concentration of similar uses in the neighborhood.

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

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

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

Conclusion: As discussed in Part II.B of this report, the driveway can accommodate at least one, possibly two, vehicles and there is ample unrestricted off-street parking along both sides of Holdridge Road. The Hearing Examiner concurs with Technical Staff and finds that there is adequate on-street parking to accommodate the accessory apartment use and the parking requirements of Article 59-E are 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. D of this Report, the Housing Code Inspector's report (Exhibits 16) specifies certain conditions. Petitioner has agreed to meet all the conditions and will comply with the directives of the Housing Code Inspector.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Daniel Sheehan, BOA No. S-2867, which seeks a special exception for an accessory apartment to be located at 13202 Holdridge Road, Silver Spring, Maryland, be **GRANTED**, with the following conditions:

1. Petitioner is bound by his testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in this Report and Recommendation;
2. Petitioner must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement dated March 13, 2013 (Exhibit 16), and as amended during the hearing, as follows:
 - a. Install egress window in bedroom. Window must be at least 5 sq feet opening and no more than 44" from floor to window opening. Window must be a minimum height of 24" and a minimum width of 20".
 - b. Reinstall cover on breaker box.
 - c. Install romex connector on wires going into breaker box.
 - d. Repair walkway going to the Accessory Apartment.
 - e. Install light on left side of house to light up walkway to the Accessory Apartment.
 - f. The [Accessory Apartment is 582.12 square feet in size]. There is 426.69 sq feet of habitable space. [Occupancy is limited to no more than two unrelated persons or a family of two].
 - g. The driveway will accommodate 2 cars [parked] end to end.
 - h. There is off-street parking (No permit needed).
 - i. Secure interior door from the living room into the hallway leading to stairs to main dwelling and from the kitchen into the utility room.
3. Based on habitable space in the accessory apartment (426.69 square feet), no more than two unrelated persons or a family of two may reside in the accessory apartment;
4. Petitioner must install either a standard residential motion sensor light fixture to the south side of the dwelling or low-voltage ground pathway lights to illuminate the walkway to the accessory apartment entrance;
5. Petitioner must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
6. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
7. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;

8. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
9. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: April 29, 2013

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tammy J. CitaraManis". The signature is fluid and cursive, with the first name "Tammy" being more legible than the last name "CitaraManis".

Tammy J. CitaraManis
Hearing Examiner