

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY, MARYLAND

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**IN THE MATTER OF: NEAL S. COHEN and** \*  
**BRIANA J. MALEY for a conditional use** \*  
**for an attached accessory apartment on** \*  
**Property located at 13 Columbia Avenue,** \*  
**Takoma Park, Maryland** \*

OZAH Case No. CU 16-02

\*\*\*\*\*

Neal S. Cohen \*

Applicants \*

\*\*\*\*\*

Ivan Eloisa \*

Department of Housing and \*

Community Affairs \*

\*\*\*\*\*

Before: Tammy J. CitaraManis, Hearing Examiner

**HEARING EXAMINER'S REPORT AND DECISION**

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## I. STATEMENT OF THE CASE

Application CU 16-02, filed July 13, 2015, by Neal S. Cohen and Briana J. Maley (Applicants or Applicant), seeks approval of a conditional use to allow an attached accessory apartment in accordance with Zoning Ordinance §§ 59-3.3.3.A & B and 59-7.3.1.<sup>1</sup> The accessory apartment will be located in the basement of a proposed rear addition to an existing two-story single-family dwelling located at 13 Columbia Avenue, Takoma Park, Maryland, in the R-60 Zone. The property is further described as Lot 17, Block 18 in the B.F. Gilberts Addition to Takoma Park. The Tax Account Number is 01069418.<sup>2</sup> Exhibit 3.

The property is located in the Takoma Park Historic District.<sup>3</sup> The Historic Preservation Commission approved the Historic Area Work Permit (#718842) for the proposed addition to the existing dwelling for this property on July 22, 2015. Exhibit 29, p. 6.<sup>4</sup>

This case arises from a Denial Letter and Referral Notice from the Department of Housing and Community Affairs (DHCA) dated May 7, 2015, advising the Applicants that the property did not meet the on-site parking requirements for a Class III Accessory Apartment License under the licensing provisions found in Section 29-19 of the Montgomery County Code. Exhibits 1-2. The existing asphalt driveway on the property measures 315 square feet and cannot be enlarged to comply with the minimum on-site parking requirement of 480 square feet. Applicants were referred to the Office of Zoning and Administrative Hearings (OZAH) to apply for a

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<sup>1</sup> All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended. On December 1, 2015, the County Council adopted ZTA 15-09, providing clarifications and corrections to the 2014 Zoning Ordinance (Ordinance 18-08), which became effective December 21, 2015.

<sup>2</sup> The property is jointly owned by the Applicants. Exhibit 4. Briana J. Maley submitted an Affidavit consenting to the application because she did not sign the original application or attend the hearing. Exhibit 33.

<sup>3</sup> Technical Staff reports that the property is considered to be a non-contributing resource within the Takoma Park Historic District. Exhibit 29, p. 2.

<sup>4</sup> Applicants submitted a separate application for a Tree Protection Plan Agreement with the City of Takoma Park Arborist to protect the trees on the property that are larger than 6" in diameter. Exhibit 15, p. 6. Applicants noted the location, size and species of the existing trees on the property survey. Exhibit 16.

conditional use to deviate from the on-site parking limited use standards for an accessory apartment use as provided in Section 59-3.3.3.A.2.b.i of the Zoning Ordinance.

The Hearing Examiner is authorized to hear and decide this type of Application pursuant to Section 59-7.3.1 of the Zoning Ordinance. The public hearing before the Hearing Examiner was scheduled for Thursday, November 9, 2015, in a Notice of Hearing issued on July 20, 2015. Exhibit 24. Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application dated October 30, 2015, subject to four conditions of approval. Exhibit 29, p. 2.

DHCA Housing Code Inspector Ivan Eloisa (Mr. Eloisa) inspected the exterior of the property on November 5, 2015, and reported his preliminary findings in a Memorandum dated November 5, 2015.<sup>5</sup> Exhibit 31. A final inspection will be conducted after construction is complete and final permits are obtained from the Department of Permitting Services (DPS) and Washington Suburban Sanitary Commission (WSSC). T. 9-10.

The hearing went forward as scheduled on November 9, 2015. Applicant Neal S. Cohen appeared *pro se* and testified in support of the application. Applicant testified that he reviewed the Technical Staff and DHCA Housing Inspection reports. Exhibits 29, 31. Applicant accepted and adopted the findings and conclusions in the Technical Staff report as his own testimony and agreed to comply with the conditions of approval. T. 6-8, 25. Applicant submitted an executed Affidavit of Posting and modified plans. Exhibits 16, 20(c)(i), 20(f)(i), and 30. Mr. Eloisa testified on behalf of DHCA and presented his report. There were no other individuals in support or opposition present at the hearing.

The record was left open an additional fifteen (15) days for Applicant to submit the

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<sup>5</sup> The substance of Mr. Eloisa's report is on pages 11-12 of this Decision.

Affidavit of Briana J. Maley, and allow time for Staff to review and provide written comment on the modified floor plan and elevation drawings submitted at the hearing. Prior to the close of the record, Applicant submitted the Affidavit of Briana J. Maley. Exhibit 33. Staff submitted a letter (sent via e-mail dated November 19, 2015) to the Hearing Examiner approving the modified floor plans and proposed exterior lighting, and confirming that the unenclosed steps to the accessory apartment entrance will not exceed the maximum 3 feet allowed for projections into the minimum side-yard setback.<sup>6</sup> Exhibit 34. The record closed as scheduled on November 24, 2015.

Based on a thorough review of the entire record, and for the reasons stated herein, the Hearing Examiner finds sufficient evidence that there is adequate on-street parking to grant Applicants' request to deviate from the minimum on-site parking requirements for an attached accessory apartment pursuant to Section 59-3.3.3.A.2.c. Further, the Hearing Examiner finds the standards for a conditional use application for an attached accessory apartment in Sections 3.3.3.A & B have been satisfied.

Therefore, the Hearing Examiner approves the conditional use application for an

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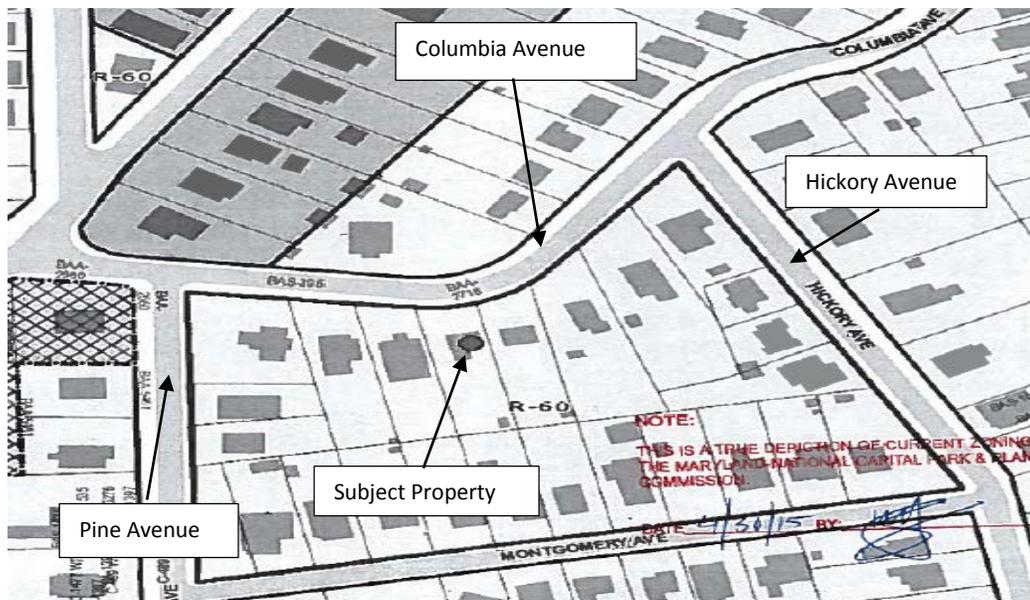
<sup>6</sup> The minimum side-yard setback in the R-60 Zone is 8 feet. The proposed addition will be setback 10 feet and 12 feet on the east and west sides of the property, respectively. As provided in Section 59-4.1.7.B.5.a.i, "any unenclosed porch, deck, terrace, steps, or stoop may project a maximum of 3 feet into any side setback. . . ." Thus, the minimum side-yard setback of 8 feet can be reduced to 5 feet. As shown on the modified floor plan (Exhibit 20(f)(i)), the unenclosed stairway to the apartment entrance will be 6 feet wide and located on the east side of the property. Staff found the stairway will "extend only 2 feet into the minimum 8 foot side yard setback; less than the maximum projection of 3 feet." Exhibit 34. However, since the plans lack exact measurements of the actual width and location of the retaining wall for the below-grade stairway, the Hearing Examiner believes the stairway may exceed the maximum 3 feet allowed for projections into the minimum side yard setback by one foot, and may require either modifications to the site plan (e.g., reduction in width or relocation to the rear) or a variance. Compliance with the development standards of the zone, including minimum setbacks, is a criteria for which a finding is required to approve a conditional use as provided in Section 7.3.1.E. On December 1, 2015, the County Council adopted ZTA 15-09, providing clarifications and corrections to the 2014 Zoning Ordinance (Ordinance 18-08), which became effective December 21, 2015. As amended, Section 59-3.3.3.A.2.c, states in pertinent part, "the Hearing Examiner may approve a conditional use for an Accessory Apartment under 7.3.1, except that findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications [and] the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications. . . ." As a result, the Hearing Examiner's evaluation of this conditional use application does not require a finding of compliance with the development standards for the zone as a criteria for approval. However, if this issue is identified at the building permit stage, any modifications to the plans submitted with this conditional use application must be filed with the OZAH.

attached accessory apartment, subject to the conditions set forth in Part IV of this Report and Decision.

## II. FACTUAL BACKGROUND

### A. The Subject Property

The property is located at 13 Columbia Avenue, Takoma Park. The interior lot is 8,875 square feet in size and is located on the south side of Columbia Avenue, which Staff reports is “approximately 377 feet east of its intersection with Carroll Avenue in the City of Takoma Park.” Exhibit 29, p. 2. The rectangular shaped lot is located in the middle of the block between Hickory Avenue to the east and Pine Avenue to the west as shown below on the Zoning Map (Exhibit 6):



Zoning Map  
Exhibit 6

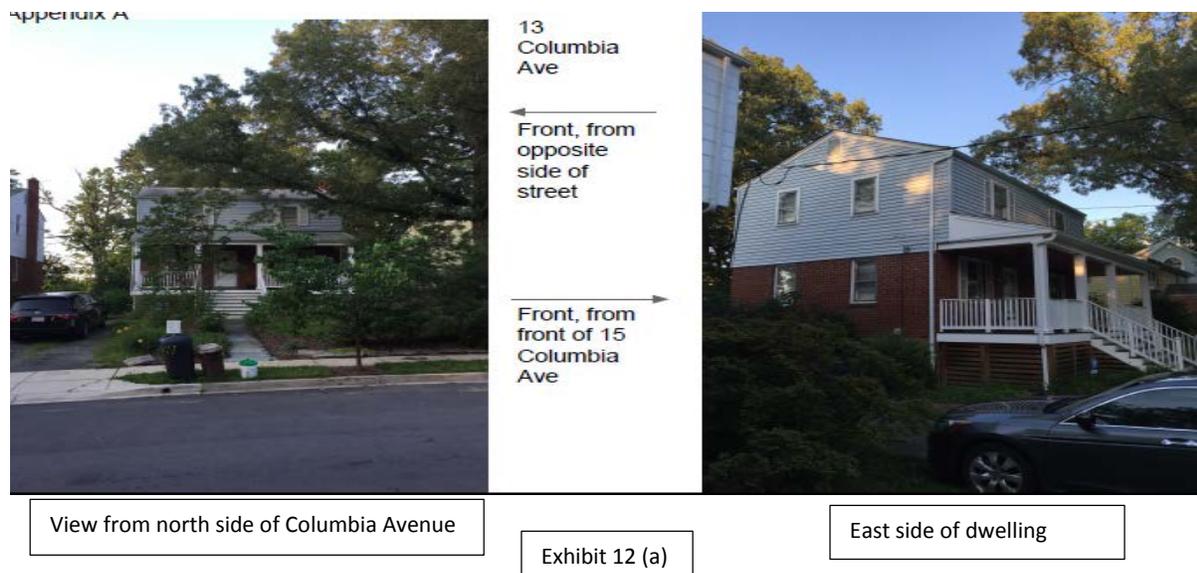
Technical Staff reports (Exhibit 29, p. 2):

The Site is improved with a two-story detached house constructed in 1960 which is considered to be a non-contributing resource to the Takoma Park Historic District. According to Maryland Department of Assessments and Taxation records the existing dwelling has an enclosed area of 1,204 square feet.

As observed during a site visit on July 22, 2015, the exterior of the house is in good condition and existing landscaping appears well maintained. An existing asphalt driveway located along the property's eastern lot line can accommodate two cars parked in tandem. Unrestricted street parking is available on Columbia Avenue fronting the site. However, on-street parking is prohibited along the north side of Columbia Avenue opposite the subject Site.

Applicant reports that the footprint for the existing dwelling is approximately 602 square feet and improvements include a rear three-season room (168 square feet), rear deck (140 square feet) and covered front porch (300 square feet). Below-grade steps located on the east rear corner of the dwelling provide access to the partially finished basement which Applicant reports to be approximately 450 square feet in size. Exhibit 15, pp. 1-2. The existing asphalt driveway is shared with the adjoining property to the east (15 Columbia Avenue) and provides each property with enough space to park two cars in tandem. T. 27. During his inspection of the property, Mr. Eloisa determined that Applicant's side of the driveway is 9 feet x 35 feet and approximately 315 square feet. Exhibit 31.

Photographs of the property are shown below and on the next page of this report (Exhibit 12(a) (c)):

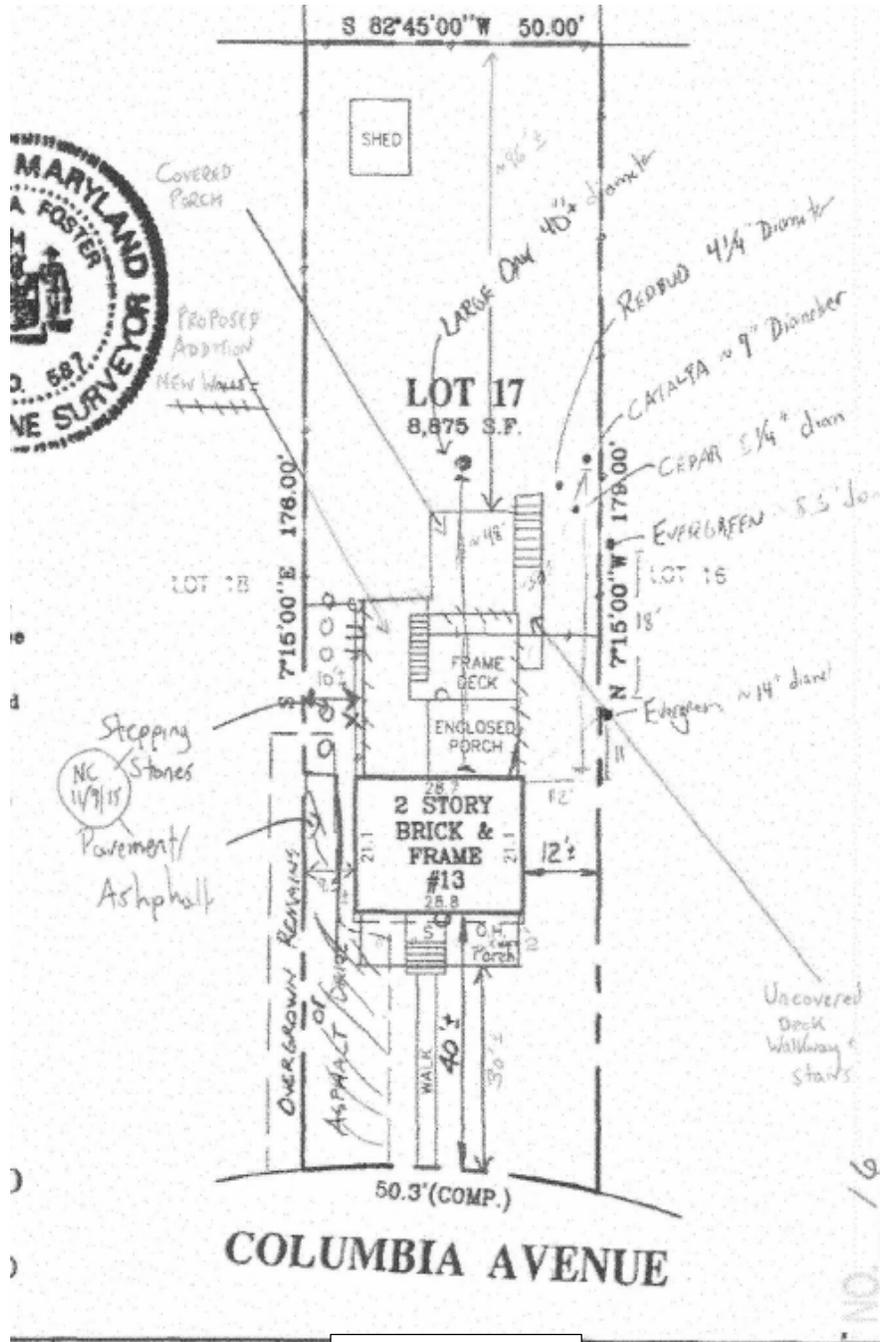




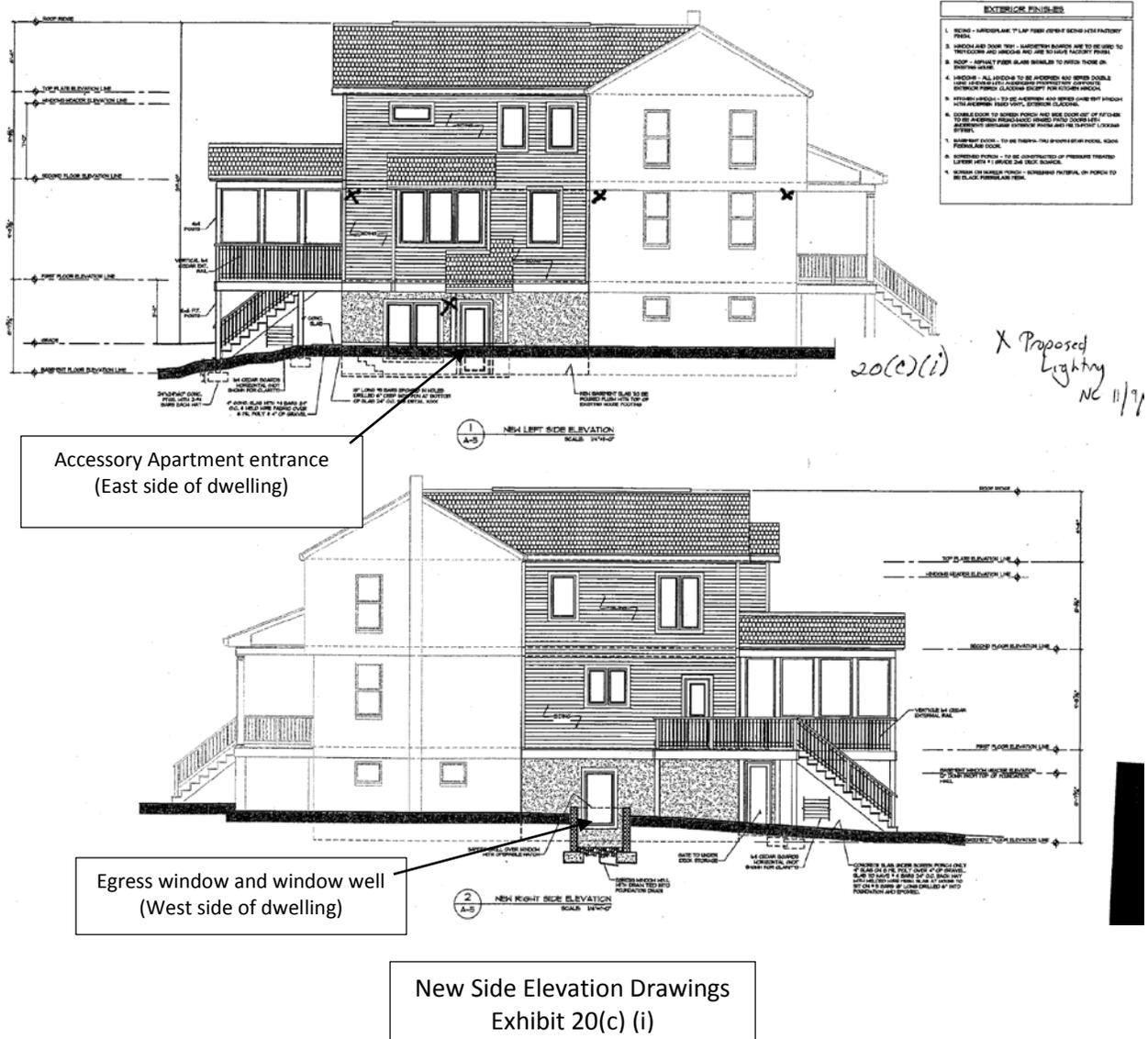
### B. The Proposed Use

Applicants are proposing to demolish the existing three-season room and deck to the rear and construct a three-story addition to the existing dwelling. Applicants modified the property survey

to show the new addition (shown below) and provided new side elevation drawings that reflect the location of the accessory apartment entrance on the east side and egress window and window well on the west side of the dwelling (shown on the next page of the report). (Exhibits 16 and 20(c) (i)):



Property Survey  
Exhibit 16



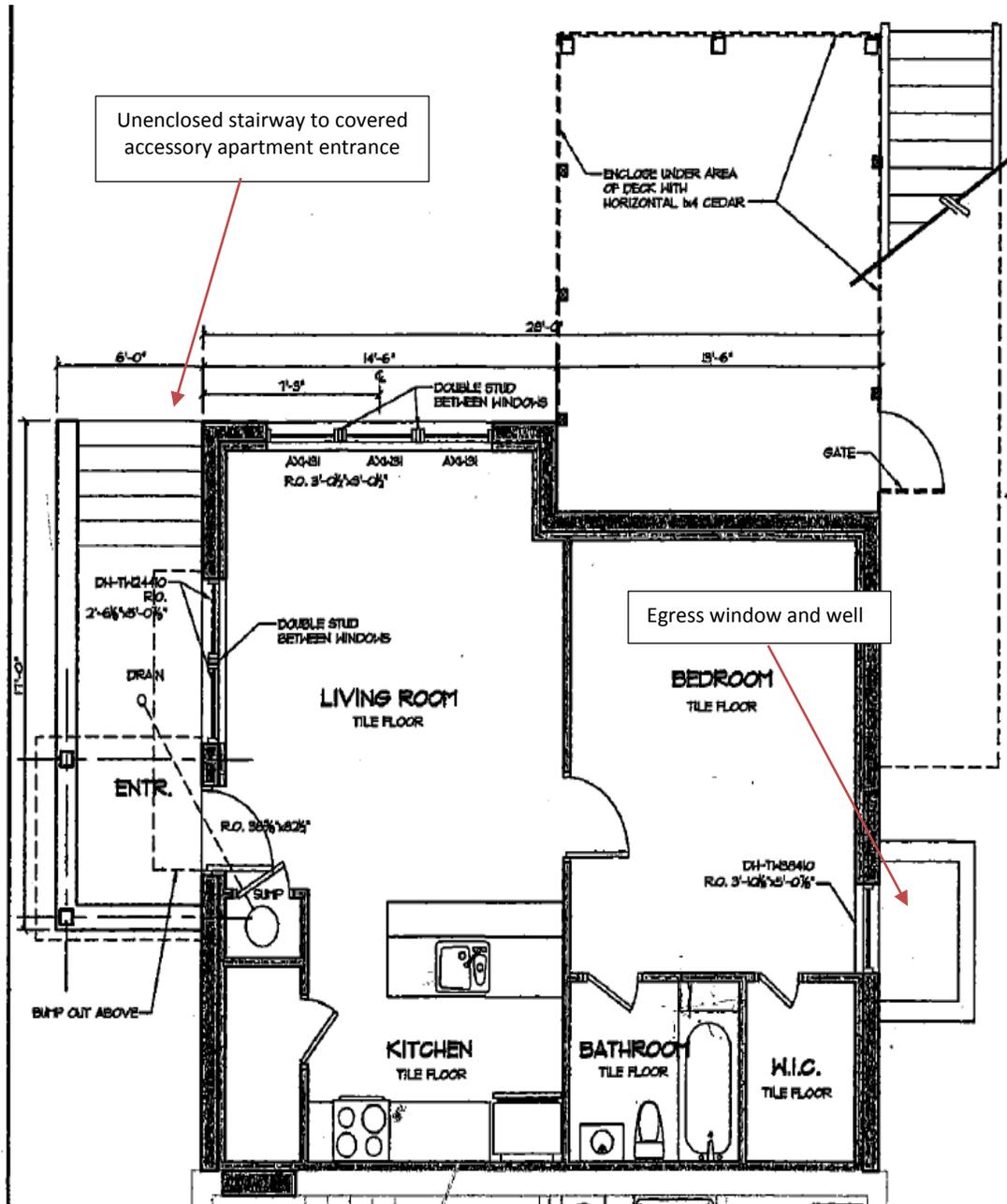
New Side Elevation Drawings  
Exhibit 20(c) (i)

Staff reported, and Applicant confirmed at the hearing, that the footprint for the new addition (including the basement) will be approximately 660 square feet. As a result, the footprint for the principal dwelling with the new addition will increase to 1,262 square feet.<sup>7</sup> Exhibits 28- 29, 4; T. 17. The 660 square feet one bedroom accessory apartment will be located in the basement of the new addition and will include a living room, kitchen and bathroom. Applicant testified that the

<sup>7</sup> Staff estimated that the total floor area for the principal dwelling with the new addition (700 square feet footprint) will be 3,864 square feet. Exhibit 29, p. 4.

bedroom will be approximately 14'x 17'. T. 23. Applicant modified the floor plan to eliminate the two bedroom windows (rear wall) and add an egress window, necessary for emergency exit, on the west wall of the bedroom. T. 14-16.

The modified floor plan for the accessory apartment is shown below (Exhibit 20(f) (i)):



Accessory Apartment Floor Plan  
In new rear addition to main dwelling  
Exhibit 20(f) (i)

The accessory apartment will have a separate covered entrance located on the east side of the dwelling and accessed via unenclosed (below-grade) steps. After construction is complete, Applicant will resurface the asphalt driveway and path extension to the end of the existing dwelling. Applicant will install a stone path along the length of the new addition and new exterior lighting to provide safe access to the accessory apartment stairway and entrance. The exterior lighting will be residential in appearance and includes a porch light to the left of the apartment door and three motion-sensor security lights (directed downward) mounted on the side of the house.<sup>8</sup> T. 46-53. The location of the stone path and proposed exterior lighting (marked with an “X”) are noted on property survey plan (Exhibit 16) and side elevation drawings (Exhibit 20(c)(i)), previously shown on pages 8 and 9 of this report.

DHCA Housing Code Inspector, Mr. Eloisa, inspected the exterior of the property on November 5, 2015, because the accessory apartment will be located in the new addition that has not been constructed. The substance of his preliminary report, dated November 5, 2015, confirmed the lot size, age of the existing dwelling, and stated that the existing driveway on the property did not meet the minimum on-site parking requirements necessary for a Class III Accessory Apartment license. Mr. Eloisa also included the standards and requirements for an Accessory Apartment conditional use as follows (Exhibit 31):

1. The property must be the owner’s primary residence.
2. The accessory apartment must have the same street address as the main house.
3. The accessory apartment must be internal to the main dwelling.
4. The accessory apartment must have a separate entrance located on the side [or] rear of the structure.

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<sup>8</sup> Based on the information provided at the hearing, Staff found that the proposed exterior lighting will be residential in appearance and “will not affect the area adversely or alter the predominantly residential nature of the area by its installation.” Exhibit 34.

5. The maximum net gross floor area used for an accessory apartment in a proposed addition to the principal dwelling must not be more than 800 SF if the proposed addition increases the floor [space] of the principal dwelling.
6. The on-site parking requirement for this property [is] 480 square feet (it is currently 315 SF [.]
7. The proposed accessory apartment must meet all requirements for habitability including ceiling height and egress.
8. The owner must obtain all required permits for the construction. All [final] Department of Permitting Services (DPS) and Washington Suburban Sanitary Commission (WSSC) permits must be obtained [] before a rental license is approved.

Mr. Eloisa offered the Applicants a brief summary of the building process and when DHCA will conduct the final inspection (T. 10):

Once you obtain the permit [from DPS], you have six months to finish construction. After you finish all the construction [and] get all the inspections from DPS, they have their own inspections done [through-out] the process. Once everything is final, then DHCA will do a final inspection, basically a move-in ready inspection before you can apply for a license. And the license will be through the City of Takoma Park.

Mr. Eloisa testified that the proposed accessory apartment, as shown on the modified floor plan, will include all of the necessary facilities for habitability. T. 18. Applicant testified that he will comply with all requirements of habitability for the accessory apartment. T. 21-22.

### **C. Adequacy of Parking**

For an accessory apartment use, Applicants are required to provide one on-site parking space for the proposed use in addition to the two spaces required for the main dwelling. Section 59-3.3.3.A.2.a.iii. (b) of the Zoning Ordinance. This requires a driveway that is a minimum of 480 square feet. The existing asphalt driveway is approximately 315 square feet in size and can only accommodate two cars parked in tandem. Based on a Denial Letter and Referral Notice from DHCA, Applicants filed this conditional use application seeking a waiver of the on-site parking requirements as

provided in Section 59-3.3.3.A.2.b. of the Zoning Ordinance. Exhibits 1-3.

Section 59-3.3.3.A.2.c states:

c. Where an Accessory Apartment conditional use is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.

- i. Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:
  - (a) The available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular basis; and
  - (b) The proposed Accessory Apartment is likely to reduce the available on-street parking within 300 feet of the proposed Accessory Apartment.

Technical Staff reports as follows (Exhibit 29, p. 6):

The Property is located on the south side of Columbia Avenue, a secondary residential public roadway with a variable width of 24 feet to 27 feet within the vicinity of the site. The Property cannot provide the one required off-street parking space to serve the proposed conditional use. The house is served by an asphalt driveway that can accommodate two vehicles parked in tandem. On-street parking is permitted along the site's frontage on first-come first-served basis. Street parking is prohibited on the north side of Columbia Avenue across from the site, due to street width.

Applicant testified that his property is located in an area of Takoma Park that does not require residential parking permits. Exhibit 12(g). He stated he has never had a problem with on-street parking in his neighborhood because most of the properties along both sides of Columbia

Avenue, Hickory Avenue and Pine Avenue have on-site parking that includes varying lengths of separate and shared driveways, some with rear parking (e.g., garage, carport or parking pad).<sup>9</sup> As a result, the demand for on-street parking is low. T. 38-39.

Applicant testified that the properties within the immediate vicinity of his property to the west (towards Pine Avenue) have on-site parking that can accommodate 2-4 parked vehicles. T. 31. The adjoining property to the east (15 Columbia Avenue) has been unoccupied for at least seven years and the absent owner allows the Applicants to use her side of the driveway. As a result, the Applicant rarely parks in the space directly in front of his property. However, he noted that there is space to park three cars between his driveway and the driveway of the adjoining property to the west (11 Columbia Avenue). T. 34-36. The large property across the street has a long driveway that can accommodate 4 cars and a second parking pad (curb cut near property line where street curves) that can accommodate two cars.<sup>10</sup>

Technical Staff found (Exhibit 29, p. 13):

Street parking is available. The subject property and properties within 300 feet of the proposed accessory apartment have street frontages of 50 feet. Taking into account the existing driveway width of 15 feet, one average sized car could be parked in front of the site. Additionally, some nearby properties have driveways which reduces the demand for on-street parking. Thus, the parking directly in front of the property is sufficient to ensure that the proposed apartment will not prevent a resident within 300 feet of the property from on-street parking near their residence on a regular basis.

Technical Staff provided photographs of the available on-street parking in front of the subject property and on Columbia Avenue to the west, shown on the next page of this report.

Exhibit 29, p. 3.

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<sup>9</sup> Applicant clarified that he believes a residential parking permit may be required on Pine Avenue. T. 30-33.

<sup>10</sup> Applicant reported that the reason this large historical property has two curb cuts for parking is because it was the location of the Town Hall for Takoma Park and a school. It is currently a private residence with two occupants. T. 29.

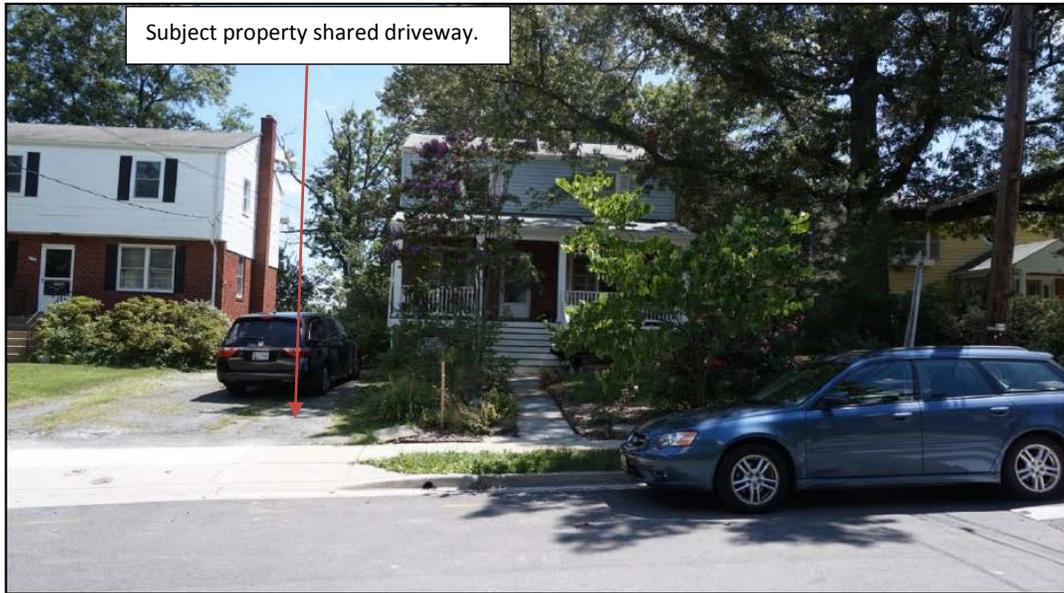


Figure 1: Front of house looking south from Columbia Avenue



Figure 2: View from Columbia Ave looking west

On-street parking on Columbia Avenue  
Exhibit 29, p. 3.

Applicant provided the following photographs of available on-street parking on Columbia Avenue looking east from the subject property (Exhibits 12(e)-(f), on the following page).



15 Columbia Avenue and shared driveway with subject property

Columbia Avenue view from north side looking east taken June 2, 2015 at 6:00 p.m.  
Exhibit 12(e)



Columbia Avenue (south side) unrestricted on-street parking

Columbia Avenue view from end of driveway looking east taken May 18, 2015 at 8:15 a.m.  
Exhibit 12(f)

Technical Staff concluded there was adequate on-street parking to accommodate the proposed use and that, “[t]he addition of one car associated with the proposed accessory apartment use is unlikely to reduce the availability of on-street parking within 300 feet of the

proposed accessory apartment.” Exhibit 29, p. 13.

For these reasons, and as illustrated in the photographs shown above, the Hearing Examiner agrees with Staff and finds there is adequate on-street parking to accommodate the main dwelling and accessory apartment use without adversely affecting or reducing the available on-street parking for residents located within 300 feet of the subject property. Therefore, the Hearing Examiner finds there is sufficient evidence to grant Applicant’s request to deviate from the on-site parking requirements for an attached accessory apartment conditional use in accordance with Section 59-3.3.3.A.2.c.

#### **D. Community Response**

There was no community response, written or by testimony, received in this case by the Hearing Examiner or Technical Staff. Exhibit 29, p. 6.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. Zoning Ordinance § 59-7.3.1.E. Specific standards are those which apply to the particular use requested; in this case, an attached accessory apartment use. Zoning Ordinance §59-3.3.3.A & B.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §7.1.1), the Hearing Examiner concludes that the conditional use proposed in this application satisfies all of the specific and general requirements for this use, as discussed below, and with the conditions of approval set forth in Part IV, below.

#### **A. Accessory Apartment Use Standards (Art. 59-3)**

The specific standards for approval of an attached accessory apartment use are set out in

Section 59-3.3.3.A.2 (Use Standards for all Accessory Apartments) and 59-3.3.3.B.2 (Use Standards for an Attached Accessory Apartment) of the Zoning Ordinance. In general, accessory apartments are permitted as limited uses. *Zoning Ordinance*, §59-3.1.6. Property owners must obtain a conditional use approval for an accessory apartment if they do not have the amount of off-street parking required for the limited use or if there is another accessory apartment within 300 feet of the block face of the proposed dwelling in which the accessory apartment is to be located. *Zoning Ordinance*, §59-3.3.2.A.2.b. Thus, conditional use applications for attached accessory apartments must meet all standards required for a limited use accessory apartment (except for the required number of on-site parking spaces or the distance between accessory uses) and standards specific to attached accessory apartments. In addition, an Applicant must demonstrate that on-street parking is sufficient to serve the use or, if the deviation is from the minimum distance between apartments, that the use “does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.” *Id.*, §59-3.3.3.A.2.c. Standards pertinent to this approval, and the Hearing Examiner’s finding for each standard, are set forth below.

**Section 59-3.3.3.A.2 – Use Standard for all Accessory Apartments**

- a. *Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:*
  - i. *Only one Accessory Apartment is permitted for each lot.*
  - ii. *The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or*
  - iii. *The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and*
    - (a) *The apartment has the same street address as the principal dwelling;*

Conclusion: Applicants are requesting approval for one accessory apartment that will be located in the basement of a new addition to the rear of the existing dwelling. It will have the same address as the principal dwelling (13 Columbia Avenue, Takoma Park). The existing driveway is 315 square feet in size and does not meet the minimum on-site parking requirements (480 square feet) for a Class III Accessory Apartment license. Based on a Denial Letter and Referral Notice from DHCA, Applicants filed an application for an attached accessory apartment conditional use on July 13, 2015, seeking approval to deviate from the on-site parking requirements. Exhibits 1-3. Applicants will file for a modified license for an accessory apartment upon approval of this conditional use application for an accessory apartment.

*(b) One on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2 on-site parking spaces must be provided;*

Conclusion: As discussed in the previous section, the existing driveway is shared with the adjoining property to the west (15 Columbia Avenue) and provides each property with space to park two vehicles in tandem. Applicant's side of the shared driveway is 315 square feet. Given the narrow width of the property (50 feet), and location of the dwelling on the lot, the driveway cannot be enlarged. Exhibit 1. Therefore, the Hearing Examiner finds that the property does not meet the on-site parking requirements. However, as provided in Section 59-3.3.3.A.2.b, Applicants filed an application for a conditional use seeking approval to deviate from the on-site parking requirements. Exhibit 3.

*(c) The maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal*

*dwelling, or 1,200 square feet, whichever is less;*

Conclusion: The accessory apartment will be located in the basement of the proposed new rear addition which will increase the footprint of the existing principal dwelling. Therefore, the Hearing Examiner finds that this standard is not applicable to the application.

*(d) The maximum floor area used for an Accessory Apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the footprint of the principal dwelling; and*

Conclusion: The proposed addition will increase the footprint of the principal dwelling from approximately 602 square feet to 1,262 square feet. The proposed accessory apartment will be located in the basement of the addition and will be approximately 660 square feet, less than the 800 square foot floor area maximum. The Hearing Examiner finds and concludes that this standard will be satisfied.

*(e) The maximum number of occupants is limited by Chapter 26 (Section 26-5); however, the total number of occupants residing in the Accessory Apartment who are 18 years or older is limited to 2.*

Conclusion: Based on Applicant's statement in support of the conditional use application, the accessory apartment will be rented for single occupancy. Exhibit 15, p. 7. Therefore, the Hearing Examiner finds that as a condition of approval, the total number of occupants residing in the accessory apartment who are 18 years or older is limited to one. This condition of approval is set forth in Part IV of this Decision.

*iv. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Tenant Dwelling or a Guest House.*

Conclusion: Staff advises there are currently no other rental residential uses on the property and included this prohibition as a condition of approval. Exhibit 29, pp. 2 and 12. Applicant testified that they will comply with all conditions of approval. T. 14. Having no evidence to the contrary, the Hearing Examiner finds that as a condition of approval, there will be no other rental residential uses on the property. This condition of approval is set forth in Part IV of this Decision.

*v. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds and concludes that this standard is not applicable to this application.

*vi. Screening under Division 6.5 is not required.*

Conclusion: This exemption of the screening requirements for conditional uses in the Residential Detached Zones is permitted under Section 59-6.5.2.B. The Applicants are not proposing or required to comply with the screening requirements under Division 6.5. Therefore, the Hearing Examiner finds that this standard has been met.

*vii. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

*b. An Accessory Apartment conditional use application may be filed with the Hearing Examiner to deviate from the following limited use standards;*

*i. The number of on-site parking spaces; or*

Conclusion: The existing asphalt driveway for the property is approximately 315 square and cannot be enlarged to satisfy the 480 square feet minimum on-site parking requirements for a Class

III Accessory Apartment license. Exhibit 31. Based on a Denial Letter and Referral Notice from DHCA, Applicants filed this conditional use application on July 13, 2015, seeking approval to deviate from the on-site parking requirements. Exhibits 1-3.

*ii. The minimum distance from any other Attached or Detached Accessory Apartment.*

Conclusion: As noted in the previous response, the conditional use application was filed under Section 59-3.3.3.A.2.b.i to deviate from the on-site parking requirements. The minimum distance from other accessory apartments in the R-60 Zone is 300 feet and is “measured in a line from side lot line to side lot line along the same block face.” Section 3.3.3.B.2.d of the Zoning Ordinance. Technical Staff advises that there are no existing accessory apartments located within 300 feet from the proposed use. Exhibit 29, p. 4. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

*c. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.*

*i. Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:*

*(a) The available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular basis; and*

*(b) The proposed Accessory Apartment is likely to reduce the available on-street parking within 300*

*feet of the proposed Accessory Apartment.*

Conclusion: The property is located in an area of Takoma Park that does not require residential permits (except on Pine Avenue). T. 30. Parking along Columbia Avenue is unrestricted on the south side and restricted on the north side. The demand for on-street parking along Columbia Avenue, Hickory Avenue and Pine Avenue is low because most of the properties have a driveway, some with a garage, carport or rear parking pad. There is space directly in front of the subject property to park one car. The properties within the immediate vicinity of the property, including those located on the north side of Columbia Avenue where on-street parking is restricted, have sufficient on-site parking to accommodate 2-4 cars. For these reasons and as previously discussed in Part II.C of this Decision, the Hearing Examiner agrees with Staff and finds that there is adequate on-street parking in front of the property to accommodate the proposed accessory apartment use without adversely affecting or reducing the available on-street parking for residents located within 300 feet of the subject property. Therefore, the Hearing Examiner finds and concludes that this standard has been met.

*ii. When considered in combination with other existing or approved Accessory Apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.*

Conclusion: As previously discussed, the conditional use application was filed to deviate from the on-site parking requirements under Section 59-3.3.3.A.2.b.i. Staff reported there are no approved accessory apartments located within 300 feet of the proposed use. As a result, no request to deviate from the distance separation was made or is required as part of this application because the application conforms to the minimum distance required.

**Section 59-3.3.3.B.2 Attached Accessory Apartment**

2. *Use Standards: Where an Attached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:*

- a. *A separate entrance is located:*
  - i. *On the side or rear of the dwelling;*
  - ii. *At the front of the principal dwelling, if the entrance existed before May 20, 2013; or*
  - iii. *At the front of the principal dwelling, if it is a single entrance door for the use of the principal dwelling and the Attached Accessory Apartment.*

Conclusion: The accessory apartment entrance will be located on the east side of the proposed addition to the rear of the existing dwelling. Therefore, the Hearing Examiner finds and concludes this standard will be met.

- b. *The detached house 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 the application for a license or a conditional use.*

Conclusion: According to the property tax records, the two-story detached dwelling was built in 1960. Exhibit 22. The proposed accessory apartment will be located in the addition to the rear of the existing dwelling. Therefore, the Hearing Examiner finds that the existing dwelling is more than 5 years old and concludes this standard has been met.

- c. *In the RE-2C, RE-1, and R-200 zones the Attached Accessory Apartment is located at least 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

- d. *In the RNC, R-90, and R-60 zones the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.*

Conclusion: For the reasons discussed in Section 59-3.3.3.A.2.b above, the Hearing Examiner finds that there are no existing accessory apartments located within 300 feet of the subject property. Therefore, the Hearing Examiner concludes this standard has been met.

### **B. Applicable General Development Standards (Article 59-6)**

Article 59-6 sets the requirements for site access, parking, open space and recreation, landscaping and outdoor lighting, screening, outdoor displays and signs.

Technical Staff reports that with the exception of the applicable parking standards, the following standards do not apply to this application as follows (Exhibit 29, p. 8):

The site access requirements under Division [6.1] do not apply to properties in Residential Detached zones. The provision of open space and recreation under Division 6.3, is not required for an accessory apartment use. Landscaping and outdoor lighting under Division 6.4, is not required for a use in a detached house that is not proposing [the installation of landscaping or] a new outdoor lighting fixture. Under § 59-3.3.3.A.2.a.vi, an accessory apartment is exempt from the screening requirements of Division 6.5. The outdoor display and storage requirements under Division 6.6 do not apply because no materials or merchandise will be displayed or stored outside. The sign requirements under Division 6.7 do not apply because no permanent signage is associated with the application.

Parking standards are governed by Division 6.2 of the Zoning Ordinance. Staff advises that the minimum on-site parking requirements for a residential use under Section 59-6.2.4.B apply to this conditional use application. *Id.* This section requires the provision of two off-street parking spaces for the single-family dwelling and one off-street parking space for the proposed accessory apartment use. The main dwelling was constructed in 1960. The shared driveway with the property to the east (15 Columbia Avenue) provides space for two vehicles parked in tandem for each property. Applicants' side of the driveway is approximately 315 square feet and cannot be enlarged. Exhibit 1. As provided in Section 59-3.3.3.A.2.b, Applicants filed a conditional use application for an accessory apartment seeking approval to deviate from the off-street parking

requirements necessary to obtain a Class III Accessory Apartment license. Exhibit 3.

For the reasons discussed in Part II C of this Report and Decision, the Hearing Examiner agrees with Staff and finds that there is adequate on-street parking in front of the property to accommodate the accessory apartment use in order to grant Applicants' request to waive the on-site parking requirements under Section 59-3.3.3.A.2.iii.(b) for an accessory apartment use. Based on this evidence, the Hearing Examiner concludes that this standard will be met.

### **C. Additional Requirements**

The County Code mandates that only owners of the property may apply for an accessory apartment license. *Montgomery County Code*, §29-19(b). The Applicants' submitted a copy of the Deed and property tax record showing joint ownership. Exhibits 4 and 22. The Code also requires that accessory apartments meet all requirements of the Housing Code. Since the accessory apartment will be located in the new addition, DHCA inspected the exterior of the existing dwelling and issued a preliminary report dated November 5, 2015. Exhibit 31. DHCA will conduct a final "move-in-ready" inspection of the accessory apartment after construction and all required permits and inspections have been obtained. Applicants will comply with the findings and conditions of approval provided in the DHCA preliminary and final Housing Inspection Reports. Accordingly, the proposed accessory apartment will meet all housing code requirements provided any repairs or modifications are done within the time prescribed by the Department of Housing and Community Affairs.

## **IV. DECISION**

Based on the foregoing findings and conclusions, and a thorough review of the entire record, the application of Neal S. Cohen and Briana J. Maley, CU 16-02, for a conditional use to allow an attached accessory apartment to be located in the basement of a proposed rear addition to an existing

detached dwelling located at 13 Columbia Avenue, Takoma Park, under Sections 59-7.3.1 and 59-3.3.3.A & B of the Zoning Ordinance, is hereby **GRANTED**, subject to the following conditions:

1. The Applicants are bound by their testimony, representations and exhibits of record.
2. The total number of occupants residing in the accessory apartment who are 18 years or older is limited to one.
3. The Applicants must obtain all required building permits for construction of the new addition. If modifications to the site and other related plans filed in this case are required by the Department of Permitting Services, the Applicants must file a copy of the revised site or other related plans with the Office of Zoning and Administrative Hearings.
4. The Applicants must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and conditions of approval to ensure safe and code-compliant occupancy.
5. No other rental Residential uses are permitted to be located on the subject property where the accessory apartment is located.
6. The Applicants must comply with the approved Historic Area Work Permit #718842 for any exterior modifications to the existing dwelling and property.
7. The Applicants 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 conditional use attached accessory apartment as granted herein. Applicants shall at all times ensure that the conditional use premises comply with all applicable codes (including but not limited to building, life, safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.



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Tammy J. CitaraManis  
Hearing Examiner

Issued this 23rd day of December, 2015.

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59-7.3.1.F.1.c.

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600

COPIES TO:

Neal S. Cohen and Briana J. Maley, Applicants  
Katherine Freeman, Executive Director, Board of Appeals  
Kathy Reilly, Planning Department

