

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
APPLICATION OF LUKE BOSCHMA FOR : Case No. CU 16-12  
ACCESSORY APARTMENT :  
:  
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A hearing in the above-entitled matter was held on July 15, 2016, commencing at 9:32 a.m., at the Stella B. Werner Council Office Building, Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Second Floor, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson  
Hearing Examiner

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E X H I B I T S

Exhibit No.	Marked/Received
24 Affidavit of Posting	3 --

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1 identification.)

2 MR. BOSCHMA: Would you like it, or do you just

3 need --

4 MS. ROBESON: Yes.

5 MR. BOSCHMA: Okay. I'm sorry.

6 MS. ROBESON: Thank you.

7 MR. BOSCHMA: This is a copy of it. I gave Ellen

8 the original.

9 MS. ROBESON: Okay. You keep it, then.

10 MR. BOSCHMA: Okay.

11 MS. ROBESON: She must have already put it in the

12 file.

13 MR. BOSCHMA: Yes, we just did it this morning, so

14 I don't know if it made its way there or not, but she has

15 the original.

16 MS. ROBESON: Okay. Now, the question here is

17 normally, as you know, these are licensed instead of going

18 through this process, you're going through this process

19 because you don't have the onsite parking required. And so,

20 the major issue is whether or not there's sufficient on-

21 street parking to enable neighbors to park.

22 MR. BOSCHMA: Sure.

23 MS. ROBESON: Now, let me do this, let me swear

24 everybody in at once --

25 MS. BOSCHMA: Okay.

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1 P R O C E E D I N G S

2 MS. ROBESON: This is a public hearing in the

3 matter of Luke Boschma, OZAH Case No. 16-12, an application

4 for an accessory apartment at 2610 Arcola Avenue, Silver

5 Spring, Maryland. My name is Lynn Robeson. I am going to

6 take your evidence today and write a decision whether to

7 approve your conditional use. If you, you have the right,

8 if you disagree with what I do you have the right to request

9 oral argument before the Board of Appeals within 10 days of

10 the date of the, the date the decision is issued.

11 Would everyone here identify themselves for the

12 record?

13 MS. BOSCHMA: I'm Kcrystal Boschma, Luke's wife.

14 MS. ROBESON: Okay.

15 MR. BOSCHMA: Luke Boschma.

16 MS. ROBESON: Okay.

17 MR. ELOISA: I'm Cesar Ivan Eloisa, Housing Code

18 Inspector.

19 MS. ROBESON: Who needs no introduction, but we do

20 it for the record. All right. Mr. Boschma, do you have the

21 affidavit of posting?

22 MR. BOSCHMA: Yes. The sign posting, you mean,

23 or --

24 MS. ROBESON: Yes. And that'll be Exhibit 24.

25 (Exhibit No. 24 was marked for

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1 MS. ROBESON: -- because we do do this, we do

2 sworn testimony under oath that's subject to questions from

3 other people. So, if you could raise your right hands?

4 Okay.

5 (Witnesses sworn.)

6 MS. ROBESON: All right. Not that I doubted you,

7 but we do have to do that. Mr. Boschma, have you read the

8 Staff Report from Park and Planning?

9 MR. BOSCHMA: Uh-huh. Uh-huh.

10 MS. ROBESON: Okay. That sets out all the

11 standards you need to meet, and --

12 MR. BOSCHMA: Yes.

13 MS. ROBESON: -- there's two conditions in there

14 that the, you can't have more than two residents over 18,

15 and you can't rent out rooms, do you agree to those

16 conditions?

17 MR. BOSCHMA: Yes.

18 MS. ROBESON: Okay. And a short way to do this,

19 the Staff Report outlines all these standards, and --

20 MR. BOSCHMA: Uh-huh.

21 MS. ROBESON: -- it, it says you meet the

22 standards, do you want to adopt this as your own testimony?

23 Adopt the findings of facts? Do you agree with the findings

24 of facts, and do you want to adopt it as your own testimony?

25 MR. BOSCHMA: Yeah.

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1 MS. ROBESON: Okay.  
2 MR. BOSCHMA: Is that, I mean, well, I guess I  
3 should -- everything that is in there is accurate, you know,  
4 and I agree to, you know, we agree to the findings, yeah. I  
5 mean, do we need to add additional --  
6 MS. BOSCHMA: Comments.  
7 MR. BOSCHMA: -- comments to that, or --  
8 MS. ROBESON: Certainly you may, but you don't  
9 need to. The reason we, I asked you what I just asked you  
10 is that Staff covers every little --  
11 MR. BOSCHMA: Sure.  
12 MS. ROBESON: -- requirement, and rather than  
13 asking you about every little requirement I just say do you  
14 want to adopt these findings as your own findings?  
15 MS. BOSCHMA: Yeah.  
16 MS. ROBESON: Or as your own testimony, and do you  
17 agree with the findings?  
18 MR. BOSCHMA: Yeah. I think if, I mean, for the,  
19 for the onsite parking I think we'd like to add additional  
20 comments --  
21 MS. ROBESON: That's fine.  
22 MR. BOSCHMA: -- in addition, but --  
23 MS. ROBESON: That's fine.  
24 MR. BOSCHMA: Okay.  
25 MS. ROBESON: Before we do this I have two other

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1 technical matters. If you, Mr. Boschma, if you --  
2 MR. BOSCHMA: Uh-huh.  
3 MS. ROBESON: -- could come forward? I would --  
4 this is Exhibit 13A, which I believe is the site plan. I  
5 didn't mean to hit you in the face with the site plan.  
6 MR. ELOISA: It's Friday. It's Friday.  
7 MS. ROBESON: Do you want to mark the general  
8 location of the pathway --  
9 MR. BOSCHMA: Sure.  
10 MS. ROBESON: -- that you're going to put in on  
11 the site plan --  
12 MR. BOSCHMA: Sure.  
13 MS. ROBESON: -- in blue pen?  
14 MR. BOSCHMA: Yes. So, there are actually -- this  
15 is, this is, this is Galt Avenue, there's a, there's a gate  
16 over here.  
17 MS. ROBESON: Uh-huh. Just say, just label gate.  
18 MR. BOSCHMA: Okay. And then we added, actually  
19 took pictures of it this morning, but the, the path goes  
20 from --  
21 MS. ROBESON: Okay.  
22 MR. BOSCHMA: -- the direct gate directly to  
23 the --  
24 MS. ROBESON: Just write path. Okay. Mr. Eloisa,  
25 do you want to take a look at this --

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1 MR. ELOISA: Sure.  
2 MS. ROBESON: -- and see if your --  
3 MR. ELOISA: Right, this is --  
4 MS. ROBESON: And do you have any comments on the  
5 location or anything like that?  
6 MR. ELOISA: The only thing I would discuss with  
7 Mr. Boschma is this is grass, and we would prefer to have  
8 some type of walking surface, either a walkway or even  
9 pavers.  
10 MR. BOSCHMA: Yeah. So, this is what we did.  
11 MS. ROBESON: Well, wait. Wait.  
12 MR. BOSCHMA: I'm sorry. I'm sorry. I'm sorry.  
13 MS. ROBESON: Okay. Do you have the pictures in  
14 hard copy?  
15 MS. BOSCHMA: No.  
16 MR. BOSCHMA: No, we don't.  
17 MS. BOSCHMA: We have it on the iPad here.  
18 MS. ROBESON: Okay. Unfortunately, we don't work  
19 that way.  
20 MR. BOSCHMA: Okay. I tried to, I tried to this  
21 morning, but of course, our printer ran out of ink. But  
22 that's fine, we can kind of go forward, and if you want to  
23 see the hard copies we can do that, but --  
24 MS. ROBESON: Well, I don't think we need to -- go  
25 ahead.

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1 MR. ELOISA: I will have to see the place  
2 myself --  
3 MR. BOSCHMA: Okay.  
4 MR. ELOISA: -- eventually, so --  
5 MR. BOSCHMA: Sure. Yes, right you're going to  
6 come out and inspect everything anyways.  
7 MR. ELOISA: Right.  
8 MS. ROBESON: Right. And I don't think -- I think  
9 you have, Mr. Eloisa, you have the condition in there that  
10 it has to be in walkable --  
11 MR. ELOISA: Right.  
12 MS. ROBESON: -- condition --  
13 MR. ELOISA: Walkable condition.  
14 MS. ROBESON: -- I forget what the -- so, as I  
15 don't think we need the picture of it today --  
16 MR. BOSCHMA: Okay.  
17 MS. ROBESON: -- because you're going to go  
18 through a licensing approval with him and he'll tell you  
19 what you need to do to, I just wanted it shown on the site  
20 plan so we could say --  
21 MR. BOSCHMA: Okay.  
22 MS. ROBESON: -- that's where it has to be --  
23 MR. BOSCHMA: I see.  
24 MS. ROBESON: -- because you're bound by what's  
25 shown on this --

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1 MR. BOSCHMA: Okay.  
2 MS. ROBESON: -- site plan.  
3 MR. BOSCHMA: Okay.  
4 MS. ROBESON: Okay?  
5 MR. BOSCHMA: Yes.  
6 MS. ROBESON: You okay with that --  
7 MR. ELOISA: Yes, I'm okay with that.  
8 MS. ROBESON: -- Mr. Eloisa? Okay. All right.  
9 You can go back then. I'm sorry, Mr. Boschma, I have one  
10 more thing I, I had a question on your floor plan --  
11 MR. BOSCHMA: Sure.  
12 MS. ROBESON: -- because there is a criteria in  
13 the Code, and Staff wasn't sure about it, that there's a  
14 criteria in the Code that says, you know, that has  
15 additional things, requirements if it expands the footprint,  
16 if the accessory apartment is an addition. Now, I read  
17 through your plans --  
18 MR. BOSCHMA: Uh-huh.  
19 MS. ROBESON: -- and it looked like to me the  
20 accessory apartment is within the original footprint --  
21 MS. BOSCHMA: Yeah.  
22 MR. BOSCHMA: Yeah.  
23 MS. ROBESON: -- of the house, and is it correct  
24 that the addition was for the kitchen?  
25 MR. BOSCHMA: Correct.

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1 MS. BOSCHMA: Oh, yeah.  
2 MR. BOSCHMA: Correct. The accessory apartment is  
3 only within the existing confines of the existing like  
4 footprint foundation.  
5 MS. ROBESON: Okay.  
6 MR. BOSCHMA: The addition is just a one-story  
7 addition, it does not go down into the basement.  
8 MS. ROBESON: Okay. I just wanted to double check  
9 that. All right. And have you had a chance -- well, I'm  
10 sure you've had a chance to look at the Housing Inspector's  
11 Report?  
12 MR. BOSCHMA: Uh-huh.  
13 MS. ROBESON: And do you agree to comply with the  
14 requirements to, for the Housing Code to make it habitable?  
15 MR. BOSCHMA: Yes.  
16 MS. ROBESON: Okay. Now, the requirement is that  
17 there be sufficient parking on the street, do you have on-  
18 street parking permitted?  
19 MR. BOSCHMA: We do. And I think one of the great  
20 things about where we're at is we don't actually require,  
21 there is no permit for where we park, so --  
22 MS. ROBESON: Okay.  
23 MR. BOSCHMA: -- anybody can park there, which is  
24 great. Obviously, if we needed to have a permit we would  
25 get a permit for the, you know, for the applicant, you know,

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1 for the apartment, but we don't need that. And being as  
2 we're on a corner lot we have, you know, two --  
3 MS. ROBESON: Right.  
4 MR. BOSCHMA: -- parking options, or two street  
5 options for, you know, whoever we decide to put in the  
6 apartment.  
7 MS. ROBESON: And are there generally spaces  
8 available on the street?  
9 MS. BOSCHMA: Always.  
10 MR. BOSCHMA: Uh-huh. Yeah. On Arcola Avenue I  
11 think we're, I think we're the only house on Arcola Avenue  
12 from Arcola to Grandview that does not have a driveway.  
13 MS. ROBESON: Okay.  
14 MR. BOSCHMA: So, a lot of, yeah.  
15 MS. ROBESON: Lucky you.  
16 MS. BOSCHMA: Yes.  
17 MR. BOSCHMA: Lucky us. Exactly. Lucky us.  
18 MS. BOSCHMA: We're just high enough that no one's  
19 put a driveway up.  
20 MR. BOSCHMA: Yeah. Yeah. So, you know, so all  
21 of our neighbors for, you know, within that block on Arcola  
22 have --  
23 MS. ROBESON: Driveways?  
24 MR. BOSCHMA: -- have driveways. Right.  
25 MS. ROBESON: Okay.

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1 MS. BOSCHMA: And we only have one vehicle.  
2 MR. BOSCHMA: And we only have one car. Yeah.  
3 MS. ROBESON: Okay. All right. I trust, you  
4 know, that's what I have to figure out. Mr. Eloisa, do you  
5 have any questions of them?  
6 MR. ELOISA: No questions. I agree that there is  
7 plenty of parking. I've visited the area many times. I  
8 drive through there often for my job inspections, and I have  
9 found that there is available parking.  
10 MS. ROBESON: Okay. Thank you. And do you want  
11 to say anything, or do you have anything else you want to  
12 say in support of the application?  
13 MS. BOSCHMA: No. I mean, when it comes to  
14 parking, I mean, I think the nice thing about the location  
15 of the property is that we are, there's bus stops, and we're  
16 in walking distance to a Metro, which is how he gets to work  
17 every day.  
18 MS. ROBESON: Nice.  
19 MS. BOSCHMA: So, there is a chance --  
20 MS. ROBESON: Which Metro?  
21 MS. BOSCHMA: Wheaton.  
22 MR. BOSCHMA: Wheaton Metro.  
23 MS. ROBESON: Wheaton.  
24 MS. BOSCHMA: Uh-huh.  
25 MS. ROBESON: Okay.

1 MS. BOSCHMA: So, there's a chance that our tenant  
 2 may not even need a vehicle, so --  
 3 MS. ROBESON: Okay.  
 4 MR. BOSCHMA: That's an option, yeah.  
 5 MS. ROBESON: Okay. Do you want to go over the --  
 6 do you have anything else?  
 7 MS. BOSCHMA: Uhn-uh.  
 8 MS. ROBESON: Okay. Do you want to go over the  
 9 housing requirements?  
 10 MR. ELOISA: Yes.  
 11 MS. ROBESON: Housing Code requirements?  
 12 MR. ELOISA: Yes, ma'am. And I think we discussed  
 13 a few of these already. The main concern in that area is  
 14 that the water heater needs to be replaced with either an  
 15 electric water heater or high efficiency water heater so  
 16 that there's no combustion air in the basement. Overall,  
 17 the house is in really good condition, it was renovated --  
 18 MR. BOSCHMA: Uh-huh.  
 19 MR. ELOISA: -- recently, so it's, that's the only  
 20 concern as far as habitability. There are some minor  
 21 repairs that can easily be made that we discussed --  
 22 MR. BOSCHMA: Yeah.  
 23 MR. ELOISA: -- as well, and are noted in the  
 24 notice.  
 25 MS. ROBESON: Okay. And you would -- a condition

1 of approval we usually say is you have to make these  
 2 improvements, do you, are you saying you're willing to make  
 3 those improvements?  
 4 MS. BOSCHMA: We will.  
 5 MR. BOSCHMA: Yeah. Yes.  
 6 MS. ROBESON: Okay. Well, with that, anything  
 7 else from anybody? Okay. I'm not going to make you go  
 8 through every detail finding because Staff did that, so with  
 9 that I am going to adjourn the hearing, and thank you for  
 10 coming in. And I will, I have 30 days to write a report and  
 11 decision, we do try to get them out sooner. And again, if  
 12 you disagree with the decision you have 10 days to request  
 13 oral argument before the Board of Appeals, all right?  
 14 MR. BOSCHMA: Okay.  
 15 MS. BOSCHMA: Okay.  
 16 MS. ROBESON: Okay. Thank you, everyone, for  
 17 coming, and the hearing is adjourned.  
 18 MR. BOSCHMA: Okay.  
 19 MS. BOSCHMA: Thank you.  
 20 MR. BOSCHMA: Thank you.  
 21 (Whereupon, at 9:45 a.m., the hearing was  
 22 concluded.)  
 23  
 24  
 25

C E R T I F I C A T E

1  
 2 DEPOSITION SERVICES, INC., hereby certifies that  
 3 the attached pages represent an accurate transcript of the  
 4 electronic sound recording of the proceedings before the  
 5 Office of Zoning and Administrative Hearings for Montgomery  
 6 County in the matter of:

7  
 8 Application of Luke Boschma  
 9 for Accessory Apartment  
 10 CU 16-12

13 By:

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 20 Paula Underwood, Transcriber  
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A	B			
<p><b>accessory (4)</b> 3:4;10:16,20;11:2</p> <p><b>accurate (1)</b> 6:3</p> <p><b>actually (3)</b> 7:14,18;11:20</p> <p><b>add (2)</b> 6:5,19</p> <p><b>added (1)</b> 7:18</p> <p><b>addition (5)</b> 6:22;10:16,24;11:6,7</p> <p><b>additional (3)</b> 6:5,19;10:15</p> <p><b>adjourn (1)</b> 15:9</p> <p><b>adjourned (1)</b> 15:17</p> <p><b>adopt (4)</b> 5:22,23,24;6:14</p> <p><b>affidavit (1)</b> 3:21</p> <p><b>again (1)</b> 15:11</p> <p><b>agree (7)</b> 5:15,23;6:4,4,17; 11:13;13:6</p> <p><b>ahead (1)</b> 8:25</p> <p><b>air (1)</b> 14:16</p> <p><b>Always (1)</b> 12:9</p> <p><b>anyways (1)</b> 9:6</p> <p><b>apartment (6)</b> 3:4;10:16,20;11:2; 12:1,6</p> <p><b>Appeals (2)</b> 3:9;15:13</p> <p><b>applicant (1)</b> 11:25</p> <p><b>application (2)</b> 3:3;13:12</p> <p><b>approval (2)</b> 9:18;15:1</p> <p><b>approve (1)</b> 3:7</p> <p><b>Arcola (5)</b> 3:4;12:10,11,12,21</p> <p><b>area (2)</b> 13:7;14:13</p> <p><b>argument (2)</b> 3:9;15:13</p> <p><b>available (2)</b> 12:8;13:9</p> <p><b>Avenue (4)</b> 3:4;7:15;12:10,11</p>	<p><b>back (1)</b> 10:9</p> <p><b>basement (2)</b> 11:7;14:16</p> <p><b>block (1)</b> 12:21</p> <p><b>blue (1)</b> 7:13</p> <p><b>Board (2)</b> 3:9;15:13</p> <p><b>Boschma (91)</b> 3:3,13,13,15,15,20, 22;4:2,5,7,10,13,22,25; 5:7,9,12,17,20,25;6:2, 6,7,11,15,18,22,24;7:1, 2,9,12,14,18,22;8:7,10, 12,15,16,17,20;9:3,5, 16,21,23;10:1,3,5,9,11, 18,21,22,25;11:1,2,6, 12,15,19,23;12:4,9,10, 14,16,17,18,20,24; 13:1,2,13,19,21,22,24; 14:1,4,7,18,22;15:4,5, 14,15,18,19,20</p> <p><b>bound (1)</b> 9:24</p> <p><b>bus (1)</b> 13:15</p>	<p>15:22</p> <p><b>condition (5)</b> 9:9,12,13;14:17,25</p> <p><b>conditional (1)</b> 3:7</p> <p><b>conditions (2)</b> 5:13,16</p> <p><b>confines (1)</b> 11:3</p> <p><b>copies (1)</b> 8:23</p> <p><b>copy (2)</b> 4:7;8:14</p> <p><b>corner (1)</b> 12:2</p> <p><b>course (1)</b> 8:21</p> <p><b>covers (1)</b> 6:10</p> <p><b>criteria (2)</b> 10:12,14</p>	<p><b>easily (1)</b> 14:21</p> <p><b>efficiency (1)</b> 14:15</p> <p><b>either (2)</b> 8:8;14:14</p> <p><b>electric (1)</b> 14:15</p> <p><b>Ellen (1)</b> 4:7</p> <p><b>ELOISA (21)</b> 3:17,17;7:6,24;8:1,3, 6:9;1,4,7,9,11,13;10:7, 8;13:4,6;14:10,12,19, 23</p> <p><b>else (3)</b> 13:11;14:6;15:7</p> <p><b>enable (1)</b> 4:21</p> <p><b>enough (1)</b> 12:18</p> <p><b>even (2)</b> 8:8;14:2</p> <p><b>eventually (1)</b> 9:4</p> <p><b>everybody (1)</b> 4:24</p> <p><b>everyone (2)</b> 3:11;15:16</p> <p><b>evidence (1)</b> 3:6</p> <p><b>Exactly (1)</b> 12:17</p> <p><b>Exhibit (3)</b> 3:24,25;7:4</p> <p><b>existing (2)</b> 11:3,3</p> <p><b>expands (1)</b> 10:15</p>	<p>10:15,20;11:4</p> <p><b>forget (1)</b> 9:14</p> <p><b>forward (2)</b> 7:3;8:22</p> <p><b>found (1)</b> 13:9</p> <p><b>foundation (1)</b> 11:4</p> <p><b>Friday (2)</b> 7:6,6</p>
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		<b>E</b>	<b>H</b>	
			<p><b>face (1)</b> 7:5</p> <p><b>facts (2)</b> 5:23,24</p> <p><b>far (1)</b> 14:20</p> <p><b>few (1)</b> 14:13</p> <p><b>figure (1)</b> 13:4</p> <p><b>file (1)</b> 4:12</p> <p><b>finding (1)</b> 15:8</p> <p><b>findings (6)</b> 5:23,23;6:4,14,14,17</p> <p><b>fine (3)</b> 6:21,23;8:22</p> <p><b>floor (1)</b> 10:10</p> <p><b>footprint (3)</b></p>	<p><b>habitability (1)</b> 14:20</p> <p><b>habitable (1)</b> 11:14</p> <p><b>hands (1)</b> 5:3</p> <p><b>hard (2)</b> 8:14,23</p> <p><b>hearing (4)</b> 3:2;15:9,17,21</p> <p><b>heater (3)</b> 14:14,15,15</p> <p><b>high (2)</b> 12:18;14:15</p> <p><b>hit (1)</b> 7:5</p> <p><b>house (3)</b> 10:23;12:11;14:17</p> <p><b>Housing (5)</b> 3:17;11:10,14;14:9, 11</p>

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