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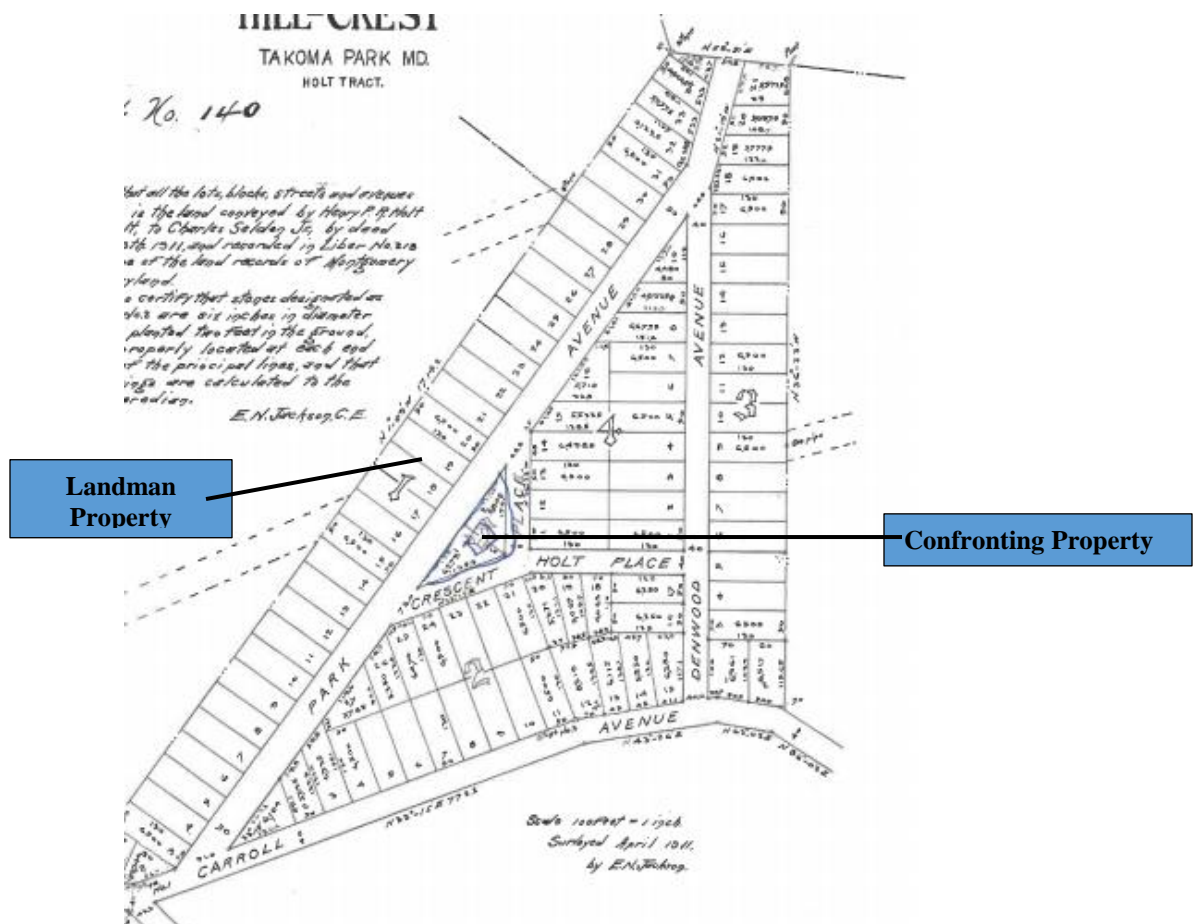
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On February 13, 2019, the Montgomery County Department of Housing and Community Development (DHCA) referred the above license application to the Office of Zoning and Administrative Hearings (OZAH) because the property did not contain on-site parking spaces as required by §3.3.3.A.2.c.ii of the Zoning Ordinance. DHCA conducted a preliminary inspection of the property on March 14, 2019 and submitted its report on the same date. Exhibit 11. Ms. Landman submitted her request to waive the parking requirements on March 20, 2019. OZAH received DHCA's Preliminary Director's Report on the required findings for an accessory apartment on March 21, 2019. Exhibits 2(a), 17. The Director's Report concluded that the proposed apartment met all zoning and County Code requirements for an accessory

apartment except for on-site parking. Exhibit 17. The boxes listed for “other residential uses” on the Director’s Report were left blank. *Id.* OZAH noticed a public hearing for April 2, 2019. Exhibit 16.

The April 2, 2019, public hearing proceeded as scheduled. Ms. Landman and a Housing Inspector from DHCA, Austin McNamara, testified at the hearing. Ms. Landman adopted the preliminary findings contained in the Director’s Report as her own testimony, after clarifying that there were no other residential rental uses on the property. T. 7.

Ms. Landman testified that the property has no driveway, which is the reason the waiver is needed. T. 8-9. She stated that there is always ample on-street parking near her house, even in the evening hours. T. 11. The majority of nearby residences have driveways. T. 8-9. She testified that residents do not park on the other side of Park Avenue from her property because that parcel is surrounded by another road (Crescent Place) and the garage access to that property is along Crescent Place. T. 10. She submitted a copy of the subdivision plat with the confronting property outlined in blue (Exhibit 22):



Finally, she testified that the property is her primary residence and that no more than two adults over 18 years of age will reside in the premises. T. 8, 11.

The Housing Inspector, Mr. Austin McNamara, presented the results of his preliminary inspection. He found no Housing Code violations on the property. T. 12. The statement in his report requiring the applicant to seek permits from various agencies is standard and applies only if new work is required. T. 13. He also testified that he had no trouble parking on the street when he visited the property and was able to park directly across the street from the property. T. 12. He confirmed Ms. Landman's testimony that no homes confront the property across Park Avenue. *Id.*

II. Findings and Conclusions

The standards for approval of an accessory apartment are set out in both the Montgomery County Code (§§29-19, 29-26) and the Montgomery County Zoning Ordinance (§§ 3.3.3.A and B). The Director's Report sets out all of the standards for approval of a license. As the Director's Report, which Ms. Landman has adopted as her own testimony, verifies that all other requirements for an accessory apartment have been met, the only issue before the Hearing Examiner is whether on-street parking is adequate to serve the proposed apartment.

The Zoning Ordinance requires a minimum of three parking spaces on the property to support the primary dwelling unit and the accessory apartment. *Zoning Ordinance*, §3.3.3.A.2.c.ii. License applicants may seek a waiver of this if there is "adequate" on-street parking to support the proposed apartment. Under the Zoning Ordinance, parking is adequate if:

- A) the available parking for residents within 300 feet of the proposed accessory apartment would permit a resident to park on-street near his or her residence on a regular basis; and*
- (B) the proposed accessory apartment is not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.*

Montgomery County Code, §29-26(b)(6).

The Hearing Examiner finds from the testimony of Ms. Landman and the Housing Inspector that there is sufficient on-street parking available for residents within 300 feet of the proposed apartment. Most of the properties in the vicinity have driveways. The plat submitted supports Ms. Landman's testimony

that at least two spaces are regularly available on the opposite side of Park Avenue as does Mr. McNamara's testimony. No one opposed the application. Thus, the only evidence in the record supports a finding on-street parking will be adequate under §29-26(b) of the Montgomery County Code.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 4th day of April, 2019, that the Applicant's request for a waiver of the number of spaces required for the accessory apartment located at 232 Park Avenue, Takoma Park, MD 20912, be *approved*.



Lynn A. Robeson
Hearing Examiner

COPIES TO:

Jessica Landman
Austin McNamara, Housing Inspector