

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND

Council Office Building
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www.montgomerycountymd.gov/content/council/zah/index.asp

IN THE MATTER OF A REQUEST FOR A
WAIVER OF PARKING REQUIREMENTS
FOR ACCESSORY APARTMENT
LICENSE NO. 116560

Dante Figueroa
License Applicant

Supporting the Request

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Austin McNamara
Housing Inspector II

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Before: Lynn A. Robeson, Hearing Examiner

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* OZAH Case No. ADU 20-01
* DHCA Pending License No. 116560
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REPORT AND DECISION

I. CASE SUMMARY

The applicant for the above accessory apartment license (License No. 116560), Mr. Dante Figueroa, seeks a waiver from the number of on-site parking spaces required for a proposed accessory apartment located at 2714 East West Highway, Chevy Chase, Maryland. Exhibit 1.

The Montgomery County Department of Housing and Community Affairs (DHCA) referred the Applicant to the Office of Zoning and Administrative Hearings (OZAH) on October 4, 2019, after finding that the subject property did not have the number of on-site parking spaces required by the Montgomery County Zoning Ordinance. *See, Montgomery County Zoning Ordinance, §59.3.3.3.A.2.c.ii.* Exhibit 2. Mr. Figueroa filed a request to waive the parking required on March 12, 2020. Exhibit 1. DHCA issued its initial director's report of findings (Director's Report) on February 25, 2020. Exhibit 5. The Director's Report concluded that the proposed apartment met all zoning and County Code requirements for an accessory apartment except for the required number of on-site parking spaces.

OZAH scheduled a public hearing for April 10, 2020, which proceeded as scheduled. Mr. Figueroa testified at the hearing. No one appeared in opposition to the request.

Mr. Figueroa adopted the preliminary findings contained in the Director's Report as his own testimony. T. 25. He testified and presented evidence that the existing driveway on his property is approximately 25 feet long and may accommodate one SUV-type vehicle. T. 20-24 His home is on a service road, and there is room for three cars to park in front of his house on the service road. On-street parking is not restricted. T. 27. A photograph submitted by the Applicant (looking from west to east) shows the service road and vehicles parked in front of his house (Exhibit 8(b), below):



The red car in the photograph shown above is the approximate boundary of Mr. Figueroa's property. Even with construction both on his property and his neighbor's property, there is still room for 3-4 more cars to park on the service road. T. 8-10. Another photograph of his property from the opposite direction shows that parking is available in front of both he and his neighbor's house even though both are under construction (Exhibit 8(h), below):



Exhibit 8(h)

The Housing Inspector, Mr. Austin McNamara, confirmed that parking is permitted along the service road. T. 27. He stated that the driveway can accommodate one vehicle and could accommodate one of the residents once construction ends. According to him, he had no problem finding on-street parking when he visited the property even with his large vehicle. On another occasion, he and his partner visited the property in separate vehicles and neither had difficulty finding on-street parking. T. 27-28.

Mr. McNamara testified that the property complied with the requirements of the Zoning Ordinance except for the number of on-site parking spaces. T. 30. Mr. Figueroa agreed to make all repairs included in Mr. McNamara's inspection report. T. 30

II. FINDINGS AND CONCLUSIONS

The standards for approval of an accessory dwelling unit 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 Mr. Figueroa adopted as his 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 on-site parking spaces to support the primary dwelling unit and the accessory apartment. *Zoning Ordinance*, §§59.3.3.3.A.2.c.ii, 59.6.2.4. License applicants may seek a waiver of this if there is “adequate” on-street parking to support the proposed apartment. Parking is deemed 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 Mr. Figueroa and Mr. McNamara that there is adequate on-street parking available for residents within 300 feet of the proposed apartment. The photographs show that there are several on-street parking spaces in front of the property and close by in front of adjacent properties. Mr. McNamara confirmed that neither he or his partner had trouble finding nearby on-street parking when they visited the property. 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 21st day of April 2020, that the Applicant’s request for a waiver of the number of on-site parking spaces required for the accessory dwelling unit located at 2714 East West Highway, Chevy Chase, Maryland (License No. 116560), be *approved* in the amount requested.



Lynn Robeson Hannan
Hearing Examiner

COPIES TO:

Dante Figueroa
Austin McNamara, Housing Inspector II
Clifton Bouma, DHCA

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by the Hearing Examiner's decision on a waiver may request the Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Procedure. The Civil Division of the Montgomery County Circuit Court is located at: North Tower, 1st Floor, Rm 1200, 50 Maryland Avenue, Rockville, MD 20850. The phone number is (240) 777-9401. Anyone wishing to file an appeal should check with the Court on operations during the COVID-19 emergency at <https://www.montgomerycountymd.gov/cct/departments/civil-department.html>.