

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660**

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. 138400**

Judy Salinas

License Applicant

Supporting the Request

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OZAH Case No: ADW 22-03
DHCA License No. 138400

Austin McNamara

Housing Inspector

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Before: Andrea LeWinter, Hearing Examiner

REPORT AND DECISION

I. Case Summary

The applicant for the above accessory apartment license (License No. 138400), Ms. Judy Salinas, sought a waiver from the number of on-site parking spaces required for a proposed accessory dwelling unit located at 4419 Ives Street, Rockville, MD 20853. 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 May 11, 2022, after finding that the subject property did not have the number of on-site parking spaces required by the Montgomery County Zoning Ordinance. T. 15, *See Montgomery County Zoning Ordinance*, §59.3.3.3.A.2.c.ii. Ms. Salinas filed a request to waive the parking requirement on the same day, May 11, 2022. Exhibit 1. DHCA had issued its Preliminary Inspection Report on May

5, 2021. Exhibit 2. The Preliminary Inspection Report noted that no on-site parking spaces exist at the subject property. Id. OZAH issued a notice of a public hearing on the waiver request on June 2, 2022, scheduling the hearing for June 15, 2022. Exhibit 4.

The June 15, 2022 public hearing proceeded as scheduled. Ms. Salinas, Mr. Austin McNamara, a Housing Inspector from DHCA, and Mr. Clifton Bouma, of the Montgomery County Housing Department, testified at the hearing. No one appeared in opposition to Ms. Salinas's request.

Ms. Salinas did not raise any challenge to the preliminary findings contained in the Preliminary Inspection Report. T. 4. She testified that, while there is no on-site parking at the subject property, there are at least three public parking spaces within 300 feet of the subject property and the surrounding neighborhood has ample parking. T. 5-6. Ms. Salinas recalled only one neighbor who typically parks near the subject property but stated that this neighbor works at night and her car is not parked near the subject property after 6:00 p.m. T. 6-7. Ms. Salinas testified that she has never had a problem finding parking near the subject property, including after 5:00 p.m. T. 9.

Housing Inspector McNamara confirmed Ms. Salinas's testimony testifying that the four times he visited the subject property, he had no difficulty finding parking close to the subject property. T. 11-12. Mr. McNamara specified that his visits to the subject property included twice in January 2022 and once on May 5, 2022 at approximately 10:00 a.m., 2:00 p.m., and 4:00 p.m. T. 11. He testified that he does not believe that there will be any parking problems because, beside the consistently open spots in front of the subject property, there is sufficient public parking on the length of Ives Street and the closest cross street to the subject property. T.12-13. He recalled that at each of his visits, Ms. Salinas would arrive after he did and at no time did she have difficulty locating parking. T. 12. Mr. McNamara concurred that there are three-to-four open spots available

within 300 feet of the subject property. T. 13. He did not believe there was any reason why the waiver should not be granted as there is no shortage of parking near the subject property. T. 15.

Mr. Bouma testified that he provided Ms. Salinas the waiver application on May 11, 2022 and that she picked up the signage for the property on May 11, 2022. T. 15.

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 Preliminary Inspection Report sets out the standards for approval of a license. The Preliminary Inspection Report, which Ms. Salinas did not object to, sets out a few remaining requirements for an accessory apartment that Ms. Salinas must meet, but 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*, §§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 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.*


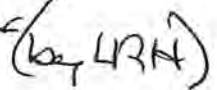
Montgomery County Code, §29-26(b)(6).

The Hearing Examiner finds based on the testimony of Ms. Salinas and Mr. McNamara that there is sufficient on-street parking available within 300 feet of the proposed apartment. There is room for at least four cars to park on Ives Street in the area bordering the subject property, as well as additional parking on Ives Street and the nearest cross-street. This parking area appears to be actively used by only one neighbor. The Housing Inspector observed parking availability on

Ives Street to ensure adequacy within the full 300 feet, and during all four of his inspections, on-street parking was available. Thus, the only evidence in the record supports a finding that 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 8th day of July, 2022, that the Applicant's request for a waiver of the number of spaces required for the accessory apartment located at 4419 Ives Street, Rockville, MD 20853. (License No. 138400), be approved.


Andrea LeWinter
Hearing Examiner 

COPIES TO:

Judy Salinas
Clifton Bouma, DHCA
Austin McNamara, Housing Inspector