

FOR MONTGOMERY COUNTY, MARYLAND

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IN THE MATTER OF THE OBJECTION TO
ACCESSORY APARTMENT LICENSE NO. 144922

Awele Izah

License Applicant

* * * * *

Michael Hillard

Objector

* * * * *

Before: Kathleen Byrne, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. CASE SUMMARY

On October 17, 2022, the Applicant applied for an attached accessory dwelling unit (ADU) in her home at **9713 Eldwick Way, Potomac, Maryland 20854** (Property). In response to this application the Department of Housing and Community Affairs (DHCA) assigned the pending application the number 144922. DHCA conducted a preliminary inspection on January 25, 2023. On that same date, Inspector Marco Guillen issued a preliminary inspection report

finding adequate onsite parking. Exhibit 2. On March 7, 2023, Objector, Michael Hillard, filed an Objection to DHCA’s Decision Regarding Accessory Dwelling Unit for License No. 144922. Exhibit 1. Mr. Hillard identified the basis for his objection as “The property is an on a street with “No Parking” signs” and questioned DHCA’s decision that adequate parking existed. *Id.*

OZAH scheduled a public hearing for Monday, April 3, 2023. The public hearing proceeded as scheduled. The Applicant, Ms. Awele Izah, testified in support of her application. Mr. Michael Hillard, the Objector, testified in opposition to DHCA’s findings. Mr. Marco Guillen, Housing Code Inspector II, testified to the Preliminary Inspection Report, site visit and his findings. Two additional neighbors attended the virtual hearing but did not testify.

II. GOVERNING LAW

In the Preliminary Inspection Report, DHCA established that the site met the code requirements for size and adequate parking, but also identified several other requirements that must be met before an ADU license could be issued. Exhibit 2. Inspector Guillen scheduled a re-inspection on July 25, 2023 to review compliance with those other identified requirements. *Id.*

Chapter 29, Section 19 of the Montgomery County Code details the licensing procedures for accessory dwelling units. The use standards for ADUs are found in Section 59.3.3.3 of the Zoning Ordinance. In addition to satisfying the licensing procedures, ADUs created after May 20, 2013 only one accessory dwelling unit with the same address as the principal dwelling is permitted per lot and if the unit is not within one mile of a Metrorail, Purple Line or MARC Station there must be **one onsite** parking space provided in addition to any onsite spaces required for the principal dwelling. *Montgomery County Zoning Ordinance*, §59.3.3.3.A (**emphasis added**). For a single-family dwelling in a residential zone, two parking spaces are required for

the principal occupants.¹ *Montgomery County Zoning Ordinance* §59.6.2.4.B. One vehicle may be parked for every 160 square feet of surfaced parking area. *Id.* at §59.6.2.5.M.5.

In the event onsite parking is not provided, the Hearing Examiner may waive the onsite parking standard if on street parking for residents is available with 300 feet of the proposed ADU and the proposed ADU is not likely to reduce the availability of on street parking within that 300 foot area of the proposed ADU. *Montgomery County Code*, §29-26(b)(6).

III. OPINION AND ANALYSIS

Mr. Hillard's raised an objection to the Preliminary Inspection Report believing DHCA's finding of adequate parking to be in error due to the "No Parking" signs on Eldwick Way, i.e., no availability of street parking at all for the ADU. Exhibit 1, T. 15-16. Ms. Izah testified that no occupant would park on the street and that more than enough parking exists on her property for occupant to park. T. 12. She also stated that more than likely there will not be a paying tenant, but the ADU will be used by her mother. T. 21-22. Mr. Hillard stated he filed the objection over concern for the impact of street parking because Eldwick Way is a narrow two-way street with no sidewalks but is used by pedestrians. T. 15. He wanted to make sure that no one parked on the street either on a full-time or a part time basis. *Id.* Inspector Guillen testified that he looks for a minimum of 320 square feet for parking onsite. T. 17-18. He observed a 2-car garage and measured 1,495 square feet of area available for parking in the driveway providing more than 2 times the minimum required space. T. 18.

IV. CONCLUSION AND ORDER

The standards for approval of an accessory dwelling unit are set out in both the Montgomery County Code at §§29-19, 29-26 and the Montgomery County Zoning Ordinance

¹ The subject property is zoned R-200. See <https://mcatlas.org/viewer/>

at §59.3.3.3.A and B. The Preliminary Inspection Report lists all the standards for approval of an ADU license. An aggrieved person may file an objection and request for a hearing with OZAH by either objecting to any finding of fact by the Director or alleging that on-street parking is inadequate. *Montgomery County Code 29-26(2)*. The Hearing Examiner has authority to “only decide the issues raised by the waiver or objection.” *Id.* at 29-26(5).

Mr. Hilliard objected to the finding of adequate parking, specifically on street parking. The Zoning Ordinance requires a minimum of three onsite parking spaces to support the primary dwelling unit and the accessory apartment. *Zoning Ordinance*, §§59.3.3.3.A.2.c.ii and 59.6.2.4. The undisputed testimony before the Hearing Examiner by Inspector Guillen before was that 1,495 square feet existed onsite for parking and only 320 square feet was needed to meet the onsite parking requirement. No evidence in the record contradicts Inspector Guillen’s testimony and no evidence in the record suggests the onsite parking to be inadequate. Applicant’s may seek a waiver of the onsite parking requirement of this if there is “adequate” on-street parking to support the proposed apartment. *Montgomery County Code 29-26(5)*. The Applicant did not request an on-street parking waiver, and none has been granted.

Code Sections 29-26(2) and 59.3.3.3.A.c.ii must be read together. Because the Hearing Examiner made no finding permitting **on-street** parking, no objection regarding **on-street** can be raised. The Hearing Examiner does find onsite parking to be adequate. Because no waiver request for on street parking has been made, no on street parking associated with this ADU application has been granted.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 12th day of April, 2023, that the **OBJECTION** to the accessory dwelling unit located at 9713 Eldwick Way, Potomac, Maryland 20854 (License No. 144922) is **DENIED**.



Kathleen Byrne
Hearing Examiner

COPIES TO:

Awele Izah
Michael Hillard
Marco Guillen, DHCA
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>.