

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND

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IN THE MATTER OF A PARKING WAIVER
REQUEST FOR ACCESSORY APARTMENT
APPLICATION NO. 148261

LUIS AND SHERYL SANCHEZ

License Applicant

* * * * *

ALI ZARRABI

Opposition, Represented by
Michele Rosenfeld, Esq.

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CLIFTON BOUMA
MICHELLE HADRICK

Representing the Department of
Housing & Community Affairs
(DHCA)

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Before: Kathleen Byrne, Hearing Examiner

OZAH Case No. ADW 23-01
DHCA Pending License No. 148261

REPORT AND DECISION

I. CASE SUMMARY

The Applicant for the above accessory dwelling unit License (License No. 148261) seeks a waiver from the number of on-site parking spaces required for a proposed attached accessory dwelling unit located at **2327 Twin Valley Lane, Silver Spring MD 20906**, 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 January 20, 2023 after finding 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.* Mrs. Sanchez filed a request for a waiver from on-site parking requirements for an accessory dwelling unit (ADU) on February 14, 2023. Exhibit 1.

On January 20, 2023, DHCA issued its Preliminary Inspection Report (“Report”). Exhibit 3. The Report concluded that the proposed accessory dwelling unit (ADU) did not meet the required number of on-site parking spaces. *Id.* The Report found that the existing on-site parking consisted of 2 garage spaces and 130 square feet. *Id.* In addition, the Report determined that the property is NOT located within 1 mile of the Metrorail, Purple Line or MARC Rail Station. *Id.* In an R-200 Zone, only one vehicle may be parked for every 160 square feet of surfaced parking area. *Montgomery County Zoning Ordinance, §59.6.2.5.M.5.*

On February 14, 2023, License Applicant, Sheryl Sanchez, filed a timely Request for Waiver of Accessory Dwelling Unit On-Site Parking Requirement for License No. 148261. Exhibit 1. On March 7, 2023, OZAH issued notice of a public hearing on the waiver request, scheduling the hearing for March 14, 2023. Exhibit 8. The public hearing proceeded as scheduled on March 14, 2023. The Applicant, Ms. Sheryl Sanchez and her husband and co-owner Mr. Luiz Sanchez, were present and testified. Also present was Housing Inspector Michelle Hadrick representing DHCA. Mr. Ali Zarrabi, represented by Michele Rosenfield, Esq., appeared in opposition to the request.

At the start of the hearing Ms. Rosenfeld proffered that if the Applicant agreed to three proposed conditions, Mr. Zarrabi would withdraw his objection to the waiver request. T. 13. The conditions proposed were presented as follows: 1) ADU occupants, guests and visitors prohibited from all use of the driveway for short or long-term parking or to load or unload occupants or items for any vehicle; 2) Applicant would be required to provide a written copy of this prohibition to all

ADU residents; and 3) Applicant must include a copy of this prohibition in any contract of sale of the home. T. 13-14. Ms. Sanchez rejected this proposal testifying that it is her belief that the ADU resident should not be more restricted than any other resident and that she may give the occupant “our garage space.” T. 16. Ms. Rosenfeld restated the first condition clarifying that the goal was to prevent a vehicle from parking in a way that would prevent Mr. Zarrabi the right to exit and enter and not an objection to the ADU resident using the garage. T. 19. Ms. Sanchez again rejected the proposal. T. 19.

Reaching no consensus on agreed terms, the hearing on the merits began. Ms. Sanchez testified in support of the requested waiver. The Applicant and her husband Mr. Luis Sanchez are the owners of the property. Exhibit 1. Ms. Sanchez referred to the photographs submitted with the application and testified that rarely one or two cars are parked along Twin Valley Drive. T. 22. She further stated that the street is very wide and that 90% of the homes have driveways and garages. *Id.* Ms. Sanchez also stated that even when there are large gatherings in the neighborhood she has never seen a shortage of parking and believes there would never be a situation where a renter would not have parking. *Id.* and Exhibit 1. The Applicant made the argument that even though not enough space to park exists in front the garage that does not mean there is no parking, but to the contrary there is an abundance of parking. T. 23. She further asserts that the ADU law was passed because of a lack of affordable housing and the ADU when complete will provide a tenant with an affordable place to live. T. 23-24. In addition, she believes the tenant should have the same rights and privileges of the property owners. *Id.*

The Applicant submitted photos of the anticipated street parking area showing a street empty of parked cars, except one, and traffic. Exhibit 6. The Applicant also submitted a plat and drawing identifying the shared driveway marked as “ingress/egress & utility easement for the use

and benefit of Lots 75-77”, improvements on the site, the location of the house with distances from the house to the street and lot lines. Exhibits 2 and 4.

Mr. Zarrabi testified in opposition to the requested waiver. Mr. Zarrabi stated that if people are parked in the driveway, it is very difficult to get in and out and that the driveway is 215 inches wide and objected to any car being parked in the driveway. T. 28-31. Mr. Zarrabi disagreed with Ms. Sanchez’s statement that there is an abundance of street parking. T. 31. He referred to photos identified as Exhibit 19 pointing out the truck in front of the Sanchez garage in relation to the driveway, provided a description of Twin Valley drive stating it that cannot be parked upon during a snow emergency, difficulty turning the corner onto Cranberry Lane and the number of cars parked regularly on Cranberry Lane. T. 31-34. Mr. Zarrabi stated the property owners cannot park in the driveway under the easement. T. 35. Mr. Zarrabi disagreed with Ms. Sanchez’s testimony and argued that a car parked on the street would make it difficult for cars to back up and to find parking across the street. T. 31-32. Mr. Zarrabi stated everyone has a car and are parking “over there” and it will be difficult to find a space. T. 32.

Housing Inspector, Michelle Hadrick, testified on behalf of DHCA. Inspector Hadrick testified that she inspected the exterior of the property and both Mr. Zarrabi and the Applicant discussed with her what they believed to be the part of the driveway that belonged to each of them. T. 37-38. She stated that she found no visible property stakes to indicate property lines. T. 38. She measured the Applicant’s driveway from the fence corner across to the grassy area using Exhibit 19a, Photo 1, to provide a visual to her narrative of where she took the driveway measurement. *Id.* Inspector Hadrick determined 130 square feet existed for onsite parking. Exhibit 3. Inspector Hadrick visited the property one time on January 19, 2023 and confirmed

her visit took place at approximately 2:00 pm. T. 40-42. Inspector Hadrack observed very little traffic and no cars parked on the street at that time. T. 41.

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 Report determined that the property does not contain a sufficient area for onsite parking. Exhibit 3. The existing driveway on the subject property totals 130 sq. ft. and therefore does not meet the minimum requirement of 160 sq. ft. per parking space for the three (3) parking spaces required under this application. 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).

Neither party disputes the fact that there is not enough onsite parking for the ADU. Neither party disputes the fact that a shared drive for ingress and egress serves both the Applicant’s and Opposition’s property. The only issue before the Hearing Examiner is whether there is adequate on-street parking to support the proposed apartment. The Hearing Examiner finds from the exhibits filed by both the Applicant and Mr. Zarrabi that there is sufficient on-street parking available for residents within 300 feet of the proposed apartment. It is approximately 133 feet from the front corner of Applicant’s garage and 86 feet from the opposite corner of Applicant’s

house to the street. Exhibit 4. Only one photo taken by the Applicant depicts a car parked on Twin Valley Lane and that car is approximately 5 houses up the street from the subject property. Exhibits 6 and 19. None of the other photos submitted nor the video depict any cars parked on Twin Valley or Cranberry Lane. The video depicts one car driving on Twin Valley Road during the full minute recording. Only Mr. Zarrabi's testimony that cars are parked "over there" during other times of the day was submitted as evidence that there is not "adequate" street parking. Taking Mr. Zarrabi's testimony into account, the Hearing Examiner finds that the record in this case indicates that public street parking is not limited in the surrounding neighborhood. The bulk of the photographs in evidence and Inspector Hadrick's preliminary inspection found no cars parked on the street and very little traffic. Based on the record in this case, the Hearing Examiner finds that the proposed ADU is not likely to reduce the available on-street parking within 300 of the property. However, given the unique ingress/egress circumstance presented by this application, i.e., only driveway serves as the lone means of ingress/egress serving 3 lots, the Hearing Examiner finds additional conditions are required to reinforce the rights and obligations of all the property owners as it relates to the shared driveway. The evidence in this record supports a finding that on-street parking will be adequate under §29-26(b) of the Montgomery County Code to support an ADU subject to the conditions below.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 30th day of March 2023, that the Applicant's request for a waiver of the number of spaces required for the accessory apartment located at **2327 Twin Valley Lane, Sliver Spring MD 20906** (Pending License No. 148261) be **APPROVED** subject to the following **CONDITIONS**:

1. Occupants, guests and visitors of the accessory dwelling unit are permitted to use the driveway only for ingress/egress to the garage on the subject property.
2. Occupants, guests and visitors of the accessory dwelling unit are prohibited from leaving a vehicle unattended in the driveway.
3. The Applicant must provide the foregoing conditions in writing to any ADU resident.



Kathleen E. Byrne
Hearing Examiner

COPIES TO:

Sheryl and Luis Sanchez
Michele Rosenberg, Esq.
Michele Hadrick, 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>.