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I. STATEMENT OF THE CASE

This case arises from an Objection to Department of Housing and Community Affairs (“DHCA”) Decision regarding Accessory Dwelling Unit (“ADU”) timely filed by David and Ann Munson on March 16, 2023, Exhibit 1; see also *Montgomery County Code*, §29.26.b.3, objecting to the Accessory Apartment Class 3 License Application for 3108 Memory Lane, Silver Spring, MD 20904 (“Property”), see Exhibit 3. The license applicant is Mr. Yilma Betru. Exhibit 3. He applied for an ADU on February 16, 2023, and DHCA assigned Mr. Betru’s pending application number 149586. *Id.* DHCA conducted a preliminary inspection on March 2, 2023, and Inspector Austin McNamara issued a Final Director’s Report on March 3, 2023 finding adequate onsite parking. *Id.* The basis for the Munson’s objection was “Too many cars crowd streets in this single-family home subdivision.”¹ Exhibit 1.

As required, OZAH scheduled a public hearing within thirty (30) days of the filing of the Objection, Thursday, April 13, 2023. *Montgomery County Code*, §29.26.b.4; Exhibit 4. On the eve of the hearing, the Munsons requested a postponement alleging that signage providing notification of the ADU construction was insufficient and that a “Stop Work” order had been issued on construction because of failures to obtain proper permitting, resulting in the ADU licensing process being halted until County requirements were fulfilled. Exhibit 11. The hearing commenced on April 13, 2023, with Objectors David and Ann Munson, Objection Supporter Juan Amenabar, Applicant Betru, and DHCA Inspector Austin McNamara present. April 13, 2023 (“4-13-23”) T.3. Addressing the request for postponement, Inspector McNamara confirmed that the licensing

¹ In their Objection, the Munsons also stated that “Memory Lane and Tanglewood have many unapproved/unlicensed ADUs – 3105 Memory Lane + 2913 Memory Lane + 3029 Schubert Drive.” As set forth in statute and explained to the Munsons during the ADO hearing, the Hearing Examiner may only decide the issues raised by the objection and is limited to the issues specified by the County Code, “objecting to any finding of fact by the Director; or alleging that on-street parking is inadequate.” Therefore, the Hearing Examiner has no authority to address the existence of unapproved or unlicensed ADUs as the Munsons allege.

process was suspended and that it was not clear whether construction of the ADU would proceed. 4-13-23 T.10-11, 13. The Hearing Examiner granted the postponement in the interest of efficiency, as an objection would be moot if the ADU was not going to be built. 4-13-23 T.12-13. The Hearing Examiner later clarified for the parties through an electronic mail message (“email”) that, considering the County’s goal of encouraging ADU development, presuming Mr. Betru intended to pursue construction, the postponement time would be limited to thirty (30) days. Exhibit 12. The parties agreed to a hearing date of May 8, 2023.

The May 8, 2023 hearing proceeded as scheduled. At the request of Mr. Amenabar and with the agreement of the parties, May 8, 2023 (“5-8-23”) T. 7., Mr. Amenabar testified first, followed by the presentation of the Objectors’ case, Mr. Betru testifying in support of his application, and Inspector McNamara testifying regarding the Final Director’s Report on Findings on Accessory Apartment Class 3 License Application, his site visit, and findings. 5-8-23 T.4-5. The record closed on May 18, 2023, after receipt of the May 8, 2023 hearing transcript.

II. STATUTORY SCHEME

Chapter 29, Section 19 of the Montgomery County Code sets forth the licensing procedures for ADUs. The use standards for ADUs are found in Section 59.3.3.3 of the Zoning Ordinance. In addition to satisfying the licensing procedures, requirements effective after May 20, 2013 mandate that only one ADU may share the same address as the principal dwelling and that if an ADU is not located 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. For a single-family dwelling in a residential

zone, two parking spaces are required for the principal occupants.² *Id.* at §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.

Montgomery County Code Chapter 29, Article III, Section 26, Subsection (b)(2) sets forth the rules for objecting to any new ADU license, including the right of any aggrieved person to object either to any finding of fact by the (DHCA) Director or by “alleging that on-street parking is inadequate.” *Montgomery County Code*, §29.26.b.2.

Of note, pursuant to Subsection (b)(5), “The Hearing Examiner may only decide the issues raised by the waiver or objection,” and, pursuant to Subsection (b)(6):

The Hearing Examiner may waive on-site parking standards if:

(A) the available on-street parking for residents within 300 feet of the proposed accessory dwelling unit would permit a resident to park on-street near his or her residence on a regular basis; and

(B) the proposed accessory dwelling unit is not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment. *Montgomery County Code*, §29.26.b.5 and §29.26.b.6.

III. SUMMARY OF EVIDENCE AND TESTIMONY

Mr. Amenabar referenced a letter he had submitted to OZAH (Exhibit 5) and testified that a car crash had occurred on Memory Lane in part due to too many cars parked on the street. 5-8-23 T.16. He stated that it is difficult to maneuver around the parked cars on Memory Lane and that there are children and special needs buses traveling down the street. 5-8-23 T.16-17. In response to questioning, Mr. Amenabar did not deny that the car crash occurred in 2013 but stated that there are still too many cars parked on Memory Lane creating safety concerns. 5-8-23 T.19.

² The Property is zoned R-90. See <https://mcatlas.org/viewer>

Mr. Munson testified that there are often many cars parked on Memory Lane, particularly cars associated with houses near and across from the proposed ADU, specifically 3112 and 3105 Memory Lane. 5-8-23 T.22. He stated that Memory Lane is 26 feet wide, so with cars parked on both sides it is congested and very difficult for emergency vehicles to travel to the end of the street. 5-8-23 T.23. He categorized the congestion as variable but consistent. *Id.* Mr. Munson referred to a series of photographs of cars parked on Memory Lane, Exhibits 9 and 12, categorizing the photographs taken by Mr. Betru in Exhibit 9 as atypical and random and those that he submitted in Exhibit 12 as accurately reflecting parking conditions. 5-8-23 T.24-26. Mr. Munson testified that Mr. Betru owns two or “it could be three” cars and because Mr. Betru has three teenage sons, he may purchase more vehicles in the future and increase the number of cars parked on Memory Lane. 5-8-23 T.26.

Mrs. Munson testified that there are often four-to-six cars parked near 3105 Memory Lane and that she does not believe the photographs submitted by Mr. Betru are typical. 5-8-23 T.33-34. She referenced the photograph she submitted showing seven cars in front of and across from 3108 Memory Lane as typical. Exhibit 12 and T.35-36. She stated that the number of cars parked on Memory Lane has gotten worse over the past few years with more and more homes being associated with four-to-six cars because more people are residing in the homes. 5-8-23 T.36-37. She expressed doubt that an ADU would really result in only one additional car being parked on the street. 5-8-23 T.34. She stated that she does not believe that there is adequate parking for additional vehicles. 5-8-23 T.36.

Mr. Betru testified that the photographs he submitted as exhibits he intentionally took at different times of day to show different, representative parking conditions. 5-8-23 T.39 and 41. He stated that he does not believe Memory Lane to be a crowded or congested road. *Id.* He said

that he believes a meeting was taking place at 3105 Memory Lane at the time the Munsons took the photographs they submitted of the parking conditions and that their photographs are not representative. 5-8-23 T.40-42. He testified that at the time of the hearing at 10:22 am on May 8, 2023, there was only one car parked outside his front door. 5-8-23 T.41. On cross examination, he admitted that the parking conditions pictured in the Munsons' photographs do occur but stated that they happen only rarely. 5-8-23 T.42.

Inspector McNamara testified that when he arrived for the 9:00 am inspection on March 2, 2023 he did not encounter any difficulty parking. 5-8-23 T.44. He acknowledged that he only visited the Property once. *Id.* He testified that the Property's on-site parking of 550 square feet exceeds the on-site parking requirement of 480 square feet. 5-8-23 T.44-45.

After Inspector McNamara concluded, Mr. Munson noted that he continues to object to licensing and construction of the ADU and stated that Mr. Betru did not begin the requisite licensing process until Code Enforcement was alerted to issues at the Property. 5-8-23 T.45-46.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As set forth in the Statutory Scheme section on page 3, an aggrieved person may object to the licensing of an ADU based on either an "object[ion] to a finding of fact by the DHCA Director" or by "alleging that on-street parking is inadequate." *Montgomery County Code*, §29.26.b.2. The Munsons objected on the basis that "[t]oo many cars crowd streets in this single-family home subdivision," which can be inferred to be a statement that on-street parking is inadequate. Exhibit 1. They did not raise any objection to the findings of fact set forth in the Final Director's Report of Findings on Accessory Apartment Class 3 License Application. *See Id.*

The requirements for on-site parking are two spaces for the primary residence, *Montgomery County Zoning Ordinance*, §59.6.2.4.B, which is the equivalent of 320 square feet of driveway footage, *see id.* at §59.6.2.5.M.5. The construction of an ADU requires one additional on-site space, *id.* at §59.3.3.3.A, or 480 square feet of driveway footage total for the Property, *see id.* at §59.6.2.5.M.5. The Property has driveway footage of 550 square feet, which exceeds the requirement by 70 square feet, and Mr. Betru has not requested, nor would he necessarily need, a waiver of parking requirements. Exhibit 3.

Mr. Munson testified that Mr. Betru’s family may already own three cars and/or that Mr. Betru’s teenage sons may acquire additional cars in the future, requiring an ADU occupant to have to park a car on the street, but this was simply speculation and no evidence of how many cars Mr. Betru’s family owns was presented. 5-8-23 T.26. This Hearing Examiner finds, therefore, that the Objectors failed to establish that Mr. Betru’s ADU occupant would of necessity have to park on the street.

However, even if Mr. Betru’s ADU occupant needed or desired to park on the street – and Mrs. Munson speculated that the ADU might be occupied by individuals who own more than one vehicle, 5-8-23 T.34, in their testimony and documentary evidence, the Objectors did not assert that on-street parking would be inadequate. No witness testified that they regularly or at any time had difficulty parking their own vehicles or had encountered limited parking availability for friends or relatives. Instead, the Objectors focused on street congestion – the existing number of parked cars making it difficult to maneuver through the street – and the safety implications of this congestion in terms of car crashes and emergency vehicles accessing Memory Lane. 5-8-23 T.16-17, 22-23, 33-34. “Congestion,” or a lot of cars parked on the street, is not equivalent to an inadequate availability of parking spaces. Only after highlighting the congestion did Mrs. Munson,

of all the witnesses, assert that she did not believe that there was adequate parking for additional vehicles, but she provided no examples or specifics. 5-8-23 T.36.

Notably, to establish congestion, Mr. and Mrs. Munson referenced photographs they took showing up to seven cars parked near the Property. Exhibit 12, 5-8-23 T.25-26, 35-36. The Hearing Examiner identified in the Munson's photographs, even with seven cars parked near the Property, space to park at least two additional cars immediately in front of the Property. Exhibit 12. If Mr. Betru had applied for a parking waiver, the standard the Hearing Examiner would apply is whether "the available on-street parking for residents within 300 feet of the proposed accessory dwelling unit would permit a resident to park on-street near his or her residence on a regular basis." *Montgomery County Code*, §29.26.b.6. Thus, at times of peak parking congestion, based on evidence presented by the Objectors, it appears that Mr. Betru could still meet this waiver standard. The Hearing Examiner, therefore, finds that the Objectors failed to establish that on-street parking is inadequate should it prove necessary to accommodate the ADU occupant(s).

V. DECISION

It is this 1st day of June, 2023, ORDERED, that the objections of David and Ann Munson to the DHCA Decision Regarding Accessory Dwelling Unit Application Number 149586, for property located at 3108 Memory Lane, Silver Spring, MD 20904 is DENIED.



Andrea LeWinter
Hearing Examiner

COPIES TO:

David and Ann Munson
Michele Rosenfeld, Esq.
Yilma Betru
Austin McNamara, DHCA
Clifton Bouma, DHCA

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by the Hearing Examiner's decision on an objection 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.