

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. 151445

JOSE R. MENJIVAR

License Applicant

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DAVID JOHNSON

Housing Code Inspector
Representing the Department of
Housing & Community Affairs
(DHCA)

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Before: Khandikile Mvunga Sokoni, Hearing Examiner

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* OZAH Case No. ADW 25-03
* DHCA Pending License No. 15686
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REPORT AND DECISION

I. CASE SUMMARY

On June 30, 2025, the Applicant, José R. Menjivar filed a Request with the Office of Zoning and Administrative Hearings (OZAH) for a Waiver of Accessory Dwelling Unit (ADU) on-site parking requirements pursuant to Montgomery County Code Sections 29-16, 29-19 and 29-26a. (Exhibit 1). This matter was referred to OZAH) after the by the Montgomery County Department of Housing and Community Affairs (DHCA) determined that the subject property located at **9638 Cotrell Terrace, Silver Spring, MD 20903**, did not satisfy the number of on-site

parking spaces required by the Montgomery County Zoning Ordinance to support the request for an accessory dwelling unit under Pending License No. 155686. *See Montgomery County Zoning Ordinance*, §59.3.3.3.A.2.c.ii.

On June 11, 2025, DHCA issued its Preliminary Inspection Report (“Report”) regarding a preliminary inspection conducted on June 11, 2025. (Exhibit 3). The Report concluded that there was no driveway or other on-site parking space located on the premises. T.15. The property lot is not within one mile of the Metrorail, Purple Line, or MARC Rail Station. The Principal Dwelling is approximately 1,599 square feet, and the Accessory Dwelling Unit is planned to be approximately 1,080 square feet. (*Id.*)

On July 1, 2025, OZAH issued a Notice of Public Hearing on the waiver request, scheduling the hearing for July 22, 2025. (Exhibit 4). The public hearing proceeded as scheduled remotely, via Teams, on July 22, 2025. The Applicant, Mr. Menjivar, participated via Teams and testified under oath. Also present, virtually via Teams, was Housing Code Inspector David Johnson representing the DHCA who also testified under oath. No one appeared in opposition to or support of the request.

Mr. Menjivar testified that there is no driveway at the subject property and that he is requesting a waiver rather than construct a driveway because there is sufficient street parking around his house. T.9-10. Mr. Johnson confirmed the absence of a driveway on the premises and that there is adequate unrestricted street parking.

At the conclusion of the hearing the Hearing Examiner held the record open for ten business days until August 5, 2025, for the limited purpose of receiving the entering into the Record the Court Reporter’s transcript. The transcript was received on July 31, 2025.

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 only issue before the Hearing Examiner is whether on-street parking is adequate to serve the proposed ADU. The Inspection Report states regarding parking to support the ADU license to be approved there must be:

“6. ADDITIONAL PARKING REQUIRED: If there is an existing driveway, one on-site parking space is required in addition to any on-site parking space required for the principal dwelling (Montgomery County Zoning Ordinance 59.6.2.4B); however, if a new driveway must be constructed for the ADU requirement then two onsite parking spaces, total min. 480sq. ft., shall be provided. If the property is located within one mile of any Metrorail, Purple Line or MARC Rail Station, no on-site parking space is required.”

(Exhibit 3, p.2).

The Applicant testified in support of the requested waiver. Mr. Menjivar is the owner of the subject property. (Exhibit 1). He testified that he was standing outside his property during the hearing and pointed out that his house is a large corner lot at the intersection of Braddock Road and Cottrell Terrace, and that given the size of his lot he has space for at least 10 cars around his house and could construct a driveway in the future if he ever needed more parking. T. 9. He requested the waiver because there is ample unrestricted street parking around his property. Mr. Menjivar used photos to show the position of his property relative to Braddock Road and Cottrell Terrace. Exhibit 5.

Housing Inspector, David Johnson, testified on behalf of DHCA that he inspected the property, confirmed that it is a corner lot and his observation is that there is adequate street parking. T. 15. Mr. Johnson testified that on the street there is ample unrestricted parking with no fire hydrants and no painted curbs at the intersection for both streets. He explained the methodology

for calculating how many cars can park along the street directly in front of the property and to the side of the property and concluded that three vehicles could park on Cottrell Terrace and three on Braddock Road giving a potential of six parking spaces directly along the property itself even after carving out the twenty-foot buffer from the crosswalk where cars should not park. T. 17. Inspector Johnson further testified that his conclusions about the adequacy of parking are based on observations from several visits to the property on different dates and at different times, as well as a review of public records through Google Maps and MC Atlas that have a historic record of parking in that area. T.19-20. He further confirmed that the required signage providing notice to neighbors about this application was properly posted on the property and was clearly visible when he did his inspections. *Id.*

Applicant testified that he kept the required notice posted on his property for more than a month, that no one has expressed any objections to him regarding his plans and a couple of neighbors who asked him about what he was doing expressed support once he explained his plans for an ADU. T.21-22. The Zoning Ordinance requires a minimum of three (3) 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 whose property does not meet the onsite parking requirements may seek a waiver of the parking requirements if there is “adequate” on-street parking to support the proposed apartment. Alternate 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 from the exhibits filed and the testimony of Mr. Menjivar, and Inspector Johnson that the proposed ADU is not likely to reduce the available on-street parking within 300 feet of the property. The Hearing Examiner also finds persuasive the fact that the property is a corner lot and, therefore the ample street parking is available on both Braddock Road and Cottrell Terrace. The evidence in this record supports the finding that on-street parking will be adequate under §29-26(b) of the Montgomery County Code to support an ADU if needed.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 6th day of August 2025, that the Applicant's request for a waiver of the number of spaces required for the accessory apartment located at 9638 Cottrell Terrace, Silver Spring, MD 20903 (DHCA Pending License No. 155686) is granted.

Office of Zoning and Administrative Hearings



Khandikile Mvunga Sokoni
Hearing Examiner

COPIES TO:

José R. Menjivar, Applicant
David Johnson, DHCA, Housing Code Inspector III

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 at: <https://www.montgomerycountymd.gov/cct/departments/civil-department.html>.