

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. S-2557**

**PETITION OF JOSE G. MEDINA**

OPINION OF THE BOARD

(Hearing Date: March 19, 2003)

(Effective Date of Opinion: May 13, 2003)

Case No. S-2557 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Montgomery County Zoning Ordinance to permit an existing accessory apartment.

On March 19, 2003, the Board of Appeals held a public hearing on the application pursuant to Section 59-A-4.11(a) of the Montgomery County Code. Jose Medina testified. Housing Code Inspector Cynthia Lundy of the Department of Housing and Community Affairs (DHCA) testified her inspection of the subject property. Sandra Youla of the technical staff in the Montgomery County Planning Department (MNCPPC) also testified. Shirley Lynne, President of the Wheaton Forest Civic Association testified in opposition to the application. Robert R. Stephens also testified in opposition. The Board also received three letters of opposition to the application.

Decision of the Board:                      Special exception **granted**, subject  
to conditions enumerated below.

**EVIDENCE PRESENTED TO THE BOARD**

1. Jose Medina, owner of the subject property, seeks permission under Section 59-G-2.00 for the continued use of an existing accessory apartment. The subject property is Lot 1, Block H, Wheaton Forest Subdivision, located at 11200 Bucknell Drive, Silver Spring, Maryland, 20902, in the R-60 Zone. At the hearing on the application Mr. Medina stated that the apartment is currently occupied by two adults and one child.
2. MNCPPC technical staff reviewed the application and recommends approval. Staff finds that there are six off-street parking spaces available, and that on-street

parking was available at 4 o'clock pm on a weekday. Staff finds that the portion of Bucknell Drive where the subject property is located is a two-way street separated by a three to four foot wide grassy median, and that the street width on either side of the median is 18 to 20 feet. Staff further finds that Reddie Drive, which intersects Bucknell near the subject property is a two-way street, approximately 35 feet wide. Staff states that both Bucknell Drive and Reddie Drive have curbs and ten-foot wide tree panels and sidewalks on both sides of the streets. Staff finds that the application is consistent with the Wheaton Central Business District and Vicinity Master Plan, (September, 1990), which supports a variety of housing types in the vicinity, and which, while silent on accessory apartments, supports the property's R-60 Zoning, which allows the use by special exception. Staff found one other property in the vicinity which has a special exception for a special exception for an automobile repair facility, Case No. S-830. Staff finds no non-inherent adverse effects associated with the use. Finally, staff finds that the accessory apartment is subordinate to the main dwelling, and that the site is served by adequate public facilities. f

3. DHCA Housing Code Inspector Cynthia Lundy conducted an inspection of the subject property and submitted a report [Exhibit No. 17] which details corrections which Mr. Medina must make to bring the accessory apartment into compliance with Housing Code standards. Her report states that the total habitable area of the accessory apartment is 446, square feet, which is suitable for occupancy by no more than three related, or two unrelated individuals. At the hearing Ms. Lundy submitted a map [Exhibit No. 23] showing the boundaries of the neighborhood she considered in evaluating the application, to wit: homes on both sides of Reddie Drive to the north, homes on both sides of Dodson Lane to the east, Georgia Avenue to the west, and homes on both sides of Prichard Road to the south. Ms. Lundy stated that there are no other accessory apartments within the neighborhood so-defined.

4. Mr. Medina stated at the hearing that he understand that he must make the corrections noted in the inspection report before he can obtain a license for the accessory apartment.

5. The accessory apartment is located in the basement of the house. [Exhibit No.3].

6. Mr. Medina stated at the hearing that he lives at the subject property.

7. The lot comprises 8,625 square feet. [Exhibit No. 4].

8. The house was built in 1953 and Mr. Medina has owned the house since August 31, 2000. [Exhibit Nos. 3 and 5].

9. Mr. Medina proposes no exterior modifications to the house.

10. The accessory apartment has the same address as the house and has a separate entrance, below grade, at the side of the house. Technical staff finds that the

entrance to the apartment is screened from view by existing landscaping and a railing. [Exhibit Nos. 3, 16].

11. There are six off-street parking spaces available in the driveway [Exhibit No. 16].

12. The accessory apartment contains two bedrooms, one bathroom, a kitchen, living room and dining room. The total habitable area of the accessory apartment is 446 square feet. [Exhibit Nos. 3, 17].

13. Mr. Medina stated at the hearing that he understands he can receive compensation for only one dwelling unit.

14. Shirley Lynne, President of the Wheaton Forest Civic Association testified in opposition to the application and submitted a written statement into the record [Exhibit No. 20]. Ms. Lynne stated that the accessory apartment will have a negative impact on parking in the neighborhood, and submitted a photograph into the record [Exhibit No. 20(a)] to illustrate this point. Ms. Lynne also stated that there is an already an approved accessory apartment at 2016 Glenhaven Place. Ms. Lynne objected to the appearance of a "cantina" parked in the driveway of the subject property, and stated that based upon the amount of garbage at the subject property on collection days, it appears that many people live there.

15. In response to a Board question, Mr. Medina stated that a canteen truck belonging to his cousin was temporarily parked in his driveway, but that it has been removed and will not return to the subject property.

16. Robert Stephens, who lives at 2211 Reddie Drive, also testified in opposition. Mr. Stephens objected to Mr. Medina being able to obtain approval of an existing, illegal apartment. Mr. Stephens also said that approval of the accessory apartment would increase population density in the area, and further increase traffic on Reddie Drive.

### **Specific Standards**

*Sec. 59-G-1.2. Conditions for granting a special exception.*

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular*

*use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The physical and operational characteristics necessarily associated with an accessory apartment include: the existence of the apartment as a separate entity from the main living unit but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; provision of sufficient parking; the existence of an additional household on the site; additional activity from that household, including more use of the outdoor space and more pedestrian, traffic, and parking activity; and the potential for additional noise from that additional household. The Board finds that none of the physical or operational characteristics of the proposed accessory apartment exceed what would be expected to be associated with this use. The Board therefore adopts technical staff's finding that there will be no non-inherent adverse effects of this proposed accessory apartment.

**59-G-1.21. General Conditions.**

*(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

An accessory apartment is a permissible use in the R-60 Zone.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As discussed further below, the Board finds that the use complies with these requirements.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the*

*applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board concurs with technical staff's findings that the application is consistent with the Wheaton Central Business District and Vicinity Master Plan, (September, 1990), which supports a variety of housing types in the vicinity, and which, while silent on accessory apartments, supports the property's R-60 Zoning for the subject property, which allows accessory apartments by special exception.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

No new structures and no exterior modifications are proposed. The entrance to the accessory apartment is at the side of the house, and screened from view with landscaping, preserving the single family appearance of the house. Six off-street parking spaces are available, and based on the evidence in the record, the Board finds that there is also on-street parking available. Occupancy of the apartment is limited to no more than three individuals, and the Board finds that this level of impact remains harmonious with the character of activity, traffic and parking conditions in the neighborhood. Finally, the Board accepts DHCA's definition of the neighborhood, and finds that there are no other accessory apartments within that neighborhood, and that, according to technical staff, there is only one other approved special exception in the broader vicinity.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

As discussed above, the Board finds that the level of activity associated with the accessory apartment and with the conditions imposed in this opinion, the accessory apartment will not be detrimental to the use, peaceful enjoyment economic value or development of surrounding properties or of the general neighborhood.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The accessory apartment will have none of these effects.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect*

*the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

As stated above, there are no other approved accessory apartments within the defined neighborhood for this accessory apartment. In addition, the Board finds that this accessory apartment, in conjunction with the special exception for automobile repair, will not alter the predominantly residential character of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the accessory apartment has none of these effects. The Board understands some neighbors concerns about traffic conditions in the neighborhood, but finds probative staff's findings that parking for the accessory apartment is sufficient. In addition, given the configuration of Bucknell Drive and Reddie Drive, and given the limitations on occupancy of the accessory apartment, the Board finds that the impact of the apartment's residents on traffic conditions will not be adverse.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The subject property is served by adequate public facilities.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

N/A

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Given the configuration of Bucknell Drive and Reddie Drive, and given the limitations on occupancy of the accessory apartment, the Board finds that the impact of the apartment's residents on traffic conditions will not be adverse.

- (b) *Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other authorization or approval required by law, nor does the Board's finding of facts regarding public facilities bind any other governmental agency or department responsible for making a determination relevant to the authorization, approval or licensing of the project.*

The applicant has stated his intention to comply with all relevant requirements.

- (c) *The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.*

The Board finds that the applicant has satisfied both of these burdens.

### **Specific Standards**

#### **Sec. 59-G-2.00. Accessory apartment.**

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

**(a) Dwelling unit requirements:**

- (1) *Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Only one accessory apartment exists on the site.

- (2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) *The lot is 2 acres or more in size; and*  
(ii) *The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

The accessory apartment is located in the basement of the house, thus sharing at least one party wall with the main dwelling.

- (3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

N/A

- (4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

The house, built in 1953, is 50 years old.

- (5) *The accessory apartment must not be located on a lot:*
- (i) *That is occupied by a family of unrelated persons; or*
  - (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
  - (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

None of these conditions exist on the subject site.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

The entrance to the apartment is located below grade, at the side of the house. There is existing landscaping and a railing which, together with its below grade location, screen it from view.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

No exterior modifications are proposed.

- (8) *The accessory apartment must have the same street address (house number) as the main dwelling.*

Located in the basement of the house, the accessory apartment has the same address as the house.

- (9) *The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

The accessory apartment occupies a portion of the basement of the house and is subordinate to the house. The habitable area of the accessory apartment is 446 square feet.

(b) **Ownership requirements:**

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Mr. Medina lives in the house.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Mr. Medina has owned the house since August, 2000.

- (3) *Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Mr. Medina has stated his understanding that he can receive compensation for only one dwelling unit.

- (4) *For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.*

As evidenced by a copy of the lease submitted with the application [Exhibit No. 5] Mr. Medina owns the house.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

N/A

**(c) Land use requirements:**

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

The lot comprises 8,625 square feet.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).*

The Board finds that there are no other accessory apartments within the neighborhood defined by the Department of Housing and Community Affairs.

- (3) *There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.*

The property is served by public water and sewer.

- (4) *Adequate parking shall be provided. There must be a minimum 2 off-street parking spaces, unless the Board makes either of the following findings:*

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

*Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.*

Six off-street parking spaces are available. The Board takes note of some neighbors concerns about the impact of the accessory apartment on traffic and parking in the neighborhood, but finds that the evidence of record shows adequate parking both on site and on the street.

*(5) Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.*

Six off-street parking spaces are available, and based on the evidence in the record, the Board finds that there is also on-street parking available. Occupancy of the apartment is limited to no more than three related, or two unrelated individuals, and the Board finds that this level of impact will not be detrimental to the use and peaceful enjoyment of surrounding properties, and that given the configuration of surrounding streets, it will not adversely affect the character of activity, traffic and parking conditions in the neighborhood.

Therefore, based upon the foregoing, on a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement, the Board **grants** the special exception, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent that such evidence and representations are identified in Board's opinion granting the special exception.

2. Petitioner shall make all of the corrections noted in the DHCA inspection report prior to issuance of any license for the accessory apartment.

3. Pursuant to the provisions of the Montgomery County Housing Code, and based upon its habitable area of 446 square feet, occupancy of the accessory apartment is limited to no more than three related or two unrelated persons.

4. No trash related to the Petitioner's business shall be disposed of at the subject property.

The Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13<sup>th</sup> day of May, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.