

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2564

PETITION OF ELIZABETH D. ELLIS

OPINION OF THE BOARD

(Public Hearing Date: May 7, 2003)

(Record Closed: June 4, 2003)

(Effective Date of Opinion: September 3, 2003)

Case No. S-2564 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment.

The subject property is Lot 11, Block A, Smoot's Addition to Chevy Chase Subdivision, located at 3511 Windsor Place, Chevy Chase, Maryland, 20815, in the R-60 Zone.

The Board of Appeals held a hearing on the application on Wednesday, May 7, 2003. Megan Wallace, Esquire, appeared on behalf of the petitioner, Elizabeth Ellis. Elizabeth Ellis testified in support of the application. Patricia Williams also testified in support. Dr. William Harlan testified in opposition to the application. Stephen M. Morris, Housing Code Inspector, Department of Housing and Community Affairs, also testified.

Decision of the Board: Special Exception granted subject to conditions enumerated below.

EVIDENCE PRESENTED

1. Elizabeth Ellis, owner of the subject property, seeks permission under Section 59-G-2.00 of the Zoning Ordinance for use of an existing accessory apartment. The subject property is Lot 11, Block A, Smoot's Addition to Chevy Chase Subdivision, located at 3511 Windsor Place, Chevy Chase, Maryland, 20815, in the R-60 Zone.

2. Maryland National Capital Park and Planning Commission (MNCPPC) technical staff reviewed the application and recommends approval. [Exhibit No. 18]. Staff finds that the entrance to the apartment, located at the side of the house and screened by landscaping, preserves the single family, residential appearance of the home. Staff finds the application is consistent with the pertinent, Bethesda-Chevy Chase Master Plan (April 1990). The master plan

supports measures to provide affordable housing in the Planning Area. In addition, the plan supports the R-60 zoning for the subject property, where accessory apartments are permitted by special exception. Staff finds that in the neighborhood bounded by Leland Street, Connecticut Avenue, Taylor Street and Summit Avenue, there are two other properties in the vicinity that were subject to special exception application, one of which is an accessory apartment, and that there will be no over-concentration of special exception uses. In addition staff finds that the total floor area of the apartment is about 825 square feet, that the application meets all development standards for the R-60 Zone, that the property is served by adequate public facilities and will not reduce the safety of pedestrian or vehicular traffic.

3. DHCA Housing Code Inspector Stephen Morris inspected the apartment on May 7, 2003 and found it in compliance with all requirements of the Montgomery County Code [Transcript, p. 5]. A report of his inspection is entered as Exhibit 16. He stated that the property has plenty of off-street parking, and that based upon its 532 square feet of habitable space, it is suitable for occupancy by two unrelated persons or a family of four people. Mr. Morris stated that, within the neighborhood bounded by Brookeville Road, Woodbine Street, Leland Street, Summit Avenue and Thornapple Street, there are no other approved accessory apartments.

4. The accessory apartment is located in the basement of the home. [Exhibit Nos. 3(a) and (b), 17].

5. Ms. Ellis resides at the subject property. [Exhibit No. 3(b)].

6. The lot comprises 10,170 square feet. [Exhibit No. 3(a)].

7. The house was built in 1961 and Ms. Ellis has owned it for 30 years. [Exhibit No. 3(a)].

8. Ms. Ellis proposes no exterior modifications to the house.

9. The accessory apartment has the same address as the house and has a separate entrance at the side of the house, which is below grade and is screened by landscaping. [Exhibit Nos. 3(a) and 18].

10. The accessory apartment contains a bedroom, bathroom, kitchen and living room. [Exhibit Nos. 3(a) and 17].

11. Four off-street parking spaces are available [Exhibit Nos. 3(a) and (b), Transcript, p. 15].

12. Ms. Ellis stated that she will receive compensation for only one dwelling unit. [Transcript, p. 17].

13. Patricia Williams lives at 3509 Windsor Place, adjoining the subject property on the side where the entrance to the accessory apartment is located. In a letter to the Board and in her testimony, she expressed her family's support of the application, and stated that there is plenty of off-street parking.

14. Dr. William Harlan wrote a letter to the Board, and also and also testified in opposition to the application. Dr. Harlan expressed concern about the effect of the accessory apartment on property values and on traffic.

FINDINGS OF THE BOARD

GENERAL 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; additional activity from that household, including more use of the outdoor space and more pedestrian and automobile traffic and parking activity; and the potential for additional noise from the additional household. The Board finds that none of the physical or operational characteristics of the proposed accessory apartment exceed what would be expected with the use. The Board finds that there will be no non-inherent adverse effects from 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.*

Accessory apartments are permitted by special exception 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 application 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 adopts MNCPPC technical staff's finding that the application is consistent with the Bethesda-Chevy Chase Master Plan.

- (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 or exterior modifications are proposed. The entrance to the accessory apartment is at the side of the house, down a stair way, and screened by landscaping. Four off-street parking spaces are available. Occupancy of the apartment is limited to no more than four individuals and the Board finds that this potential level of impact remains harmonious with the character of activity, traffic and parking conditions in the neighborhood. The Board adopts technical staff's finding that this accessory apartment, combined with the other two special exceptions in the vicinity will not constitute an over-concentration of similar uses

- (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 apartment and its appearance will not be detrimental to the use and peaceful enjoyment or the economic value of properties in the 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 has a light outside the entrance door which is screened by existing landscaping, thus the apartment will have none of the above, objectionable 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.*

The Board adopts MNCPPC staff's finding that there will be no over-concentration of special exception uses in the vicinity. The Board finds that the residential appearance of the home is preserved and the availability of four off-street parking spaces amply mitigates the impact of its activity on the neighborhood.

- (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 will not have these effects. The Board understands Dr. Harlan's concern about potential traffic impacts, but finds no evidence that the level of activity associated with this use will adversely affect neighborhood traffic.

- (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.*
- (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.*

The subject property is served by adequate public facilities.

- (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.*

The Board adopts technical staff's finding of no detrimental impact on vehicular or pedestrian safety.

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 is proposed.

- (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.*

Located in the basement of the house, the accessory apartment shares at least one party wall in common with the main house.

- (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.*

Not applicable.

- (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 1961, is 42 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 the listed conditions exist at the subject property.

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

The entrance to the accessory apartment is located at the side of the house, down a stairway, and screened from view by existing landscaping.

- (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.*

The accessory apartment has the same address as the main dwelling.

- (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.*

Both the overall square footage and the 532 square foot habitable area of the accessory apartment fall well within this requirement.

(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.

Ms. Ellis resides in the main dwelling unit.

- (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.*

Ms. Ellis has owned the property for 30 years.

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

Ms. Ellis stated her intention to comply with this requirement at the public hearing.

- (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.*

Ms. Ellis owns the subject property as evidenced by the deed submitted into the record as Exhibit 7.

- (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.*

Not applicable.

(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 measures 10,170 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 adopts MNCPPC staff's finding that there will be no over-concentration of special exception uses in the vicinity.

- (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 subject property is served by adequate public facilities.

- (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.

Four off-street parking spaces are available.

- (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.*

The Board finds that the level of activity associated with the apartment and its appearance will not be detrimental to the use and peaceful enjoyment or the economic value of properties in the neighborhood. The Board adopts staff's finding that there will be no detrimental impact on pedestrian or vehicular safety.

Therefore, based upon the foregoing, the Board **grants** the special exception, subject to the following conditions:

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

2. Pursuant to the provisions of the Montgomery County Housing Code and based upon the square footage of its habitable area, occupancy of the accessory apartment is limited to two unrelated persons or a family of four.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement, and Donna L. Barron necessarily absent, 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 case.

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 3rd day of September, 2003.

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.