

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. Case No. S-2589**

**PETITION OF DASHAMIR PULAJ**

OPINION OF THE BOARD

(Effective Date of Opinion: May 6, 2004)

Case No. S-2589 is an application for 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.

Pursuant to the authority contained in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner to conduct a public hearing on the application. The Hearing Examiner convened a public hearing on January 5, 2004, the record in the case closed on March 5, 2004, and on March 8, 2004, the Hearing Examiner issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 6, Block A; located at 15118 McKnew Road, Burtonsville, Maryland, 20866,

Opinion of the Board:                      Special Exception granted subject to  
Conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's report and recommendation at its Worksession on April 21, 2004. After careful consideration and review of the record, the Board adopts the report and recommendation and grants the special exception subject to the following conditions:

1. The Petitioners are bound by Petitioners' testimony, representations and exhibits of record to the extent that such testimony and representations are identified in the Board's opinion and in the Report and Recommendation of the Hearing Examiner.

2. The Petitioners are bound by the condition set out in the Memorandum of Cece Kinna, Housing Code Inspector, Division of Housing Code Enforcement (Exhibit 13), that Petitioners will house no more than two unrelated persons or a family not exceeding four persons in the accessory apartment.

3. The Petitioners must make two spaces on the gravel parking area in the northeast corner of their property available for use by the tenant of the accessory apartment, and at least one of those spaces must be solely for the tenant's use; and

4. The Petitioners must respect the Tashos' easement, must not park in the easement area and must limit the number of vehicles permanently housed on their property to two cars in their garage and two cars on the gravel parking area. When the arrival of guests causes there to be more than two cars outside of the garage, the Petitioners must see to it that the parking of those vehicles does not prevent the Tashos (or their guests) from accessing their own property through the shared driveway, as their easement entitles them to do.

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

**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 in the above-entitled case.

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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 6<sup>th</sup> day of May, 2004.

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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.



## I. STATEMENT OF THE CASE

Petition No. S-2589, filed on August 7, 2003, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in a single-family residential structure located at 15118 McKnew Road, Burtonsville, Maryland 20866. The subject property is designated Lot 6 of Block A in the Osburn Property Subdivision, and it is zoned R-200. (Tax Account No. 03134896).

On October 6, 2003, the Board of Appeals issued a notice that a hearing in this matter would be held on January 5, 2004, at 9:30 a.m., in the Second Floor Hearing Room of the Stella B. Werner Council Office Building. On November 26, 2003, the Board of Appeals adopted a resolution referring this case to the Hearing Examiner for Montgomery County to conduct a public hearing and issue a written report and recommendation to the Board of Appeals for final action.

Technical Staff at the Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a memorandum dated September 22, 2003, recommended deferral of the hearing until Petitioners widened their gravel off-street parking area and produced certain documentation (Exhibit 13).<sup>1</sup>

The Department of Housing and Community Affairs inspected the property on December 30, 2003, and set forth certain requirements for the granting of the requested special exception in a memorandum dated January 2, 2004 (Exhibit 14).

A public hearing was convened as scheduled on January 5, 2004, and it was attended by Brunilda Pulaj, acting *pro se*, in support of the petition, Ms. Cece Kinna, Housing Code Inspector of the Division of Housing and Code Enforcement, Department of Housing and Community Affairs and Housing Code Field Supervisor, Rob Dejter. Because the Petitioner indicated at the

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<sup>1</sup> Technical Staff reports are frequently quoted and paraphrased herein.

hearing that she had not yet had the opportunity to widen the gravel parking area and produce the documentation required by the Technical Staff, she agreed to adjourn the hearing until February 9, 2004, and to complete the requirements contained in both the Technical Staff report and the House Code Inspector's report by January 23, 2004. Tr. of 1/5/04, at 7. Mrs. Pulaj did produce a copy of the deed to her home, which was received and marked as Exhibit 15. The hearing was then adjourned until February 9, 2004, at 9:30 a.m.

On February 2, 2004, at the request of the Petitioner, the resumption of the hearing was postponed till February 17, 2004, at 9:30 a.m. (Exhibit 16). On February 13, 2004, Technical Staff submitted a supplemental report (Exhibit 17) recommending that the petition be granted on certain conditions. The hearing proceeded as scheduled on February 17, 2004, and testimony was received from Mrs. Pulaj and Housing Code Inspector Cece Kinna. Petitioner executed the affidavit of posting (Exhibit 18) and agreed to meet all the conditions set forth in the Technical Staff Report (Ex. 17). Tr. 6.

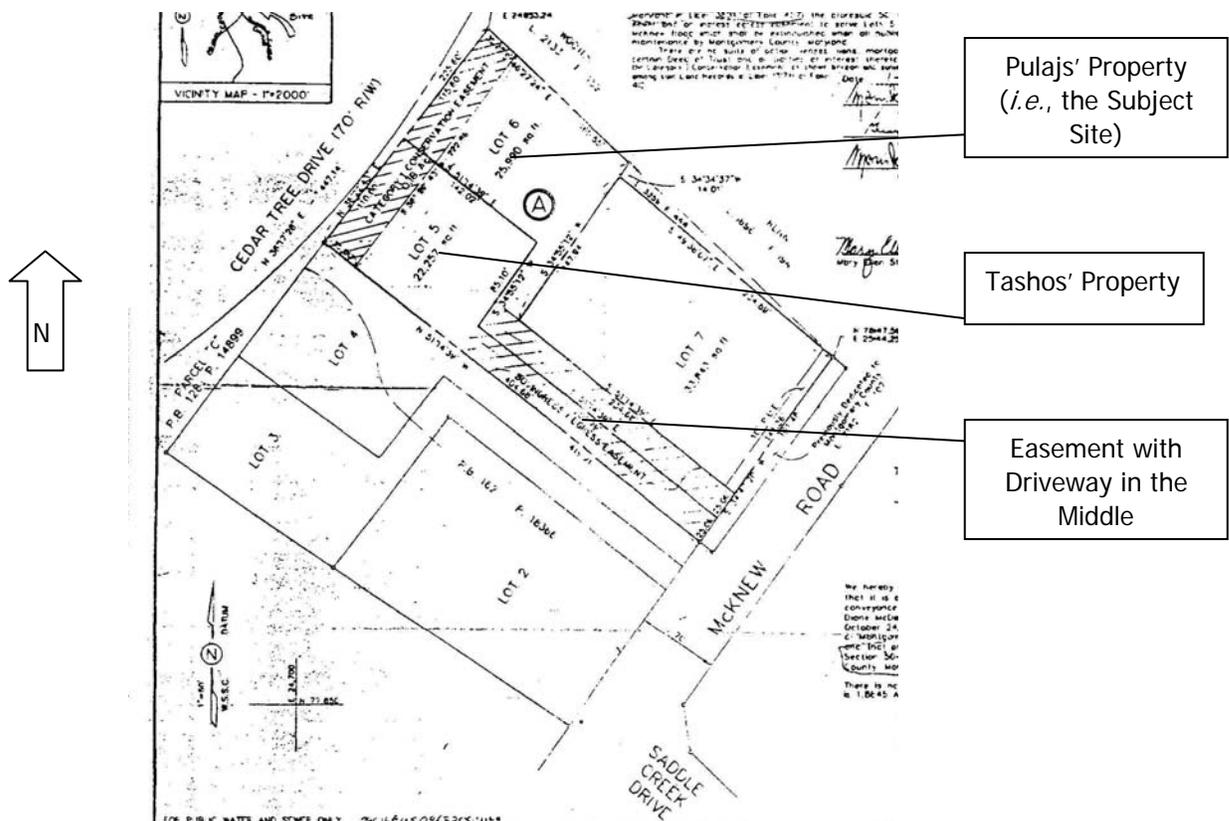
At the conclusion of the hearing, the Hearing Examiner gave Petitioners until February 27, 2004 to produce the revised site plan and landscape plan required by Technical Staff, and ordered the record held open until March 5, 2004, to receive final comments from the Technical Staff. On February 18, 2004, Petitioners submitted a revised site plan (Exhibit 19(b)) and a revised landscape and lighting plan (Exhibit 19(c)). On February 25, 2004, Technical Staff submitted an e-mail follow-up (Exhibit 20) to its reports, stating that Petitioners' revised site plan and revised landscape and lighting plan were both satisfactory. On March 2, 2004, Transportation Planning Staff's November 13, 2003, memorandum evaluating compliance with the "Adequate Public Facilities Ordinance," was submitted for the record (Exhibit 21). The record closed on March 5, 2004, with no further comments.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

As noted above, the subject property is located at 15118 McKnew Road, Burtonsville, Maryland 20866, and is designated Lot 6 of Block A in the Osburn Property Subdivision. It is zoned R-200. The lot is flat, has an area of approximately 25,990 square feet, and is flag-shaped, with a 50 foot wide ingress/egress easement from McKnew Road, which is shared with the adjacent property to the south (Lot 5). The adjacent property is owned by the Jorgi and Franka Tasho, who, on January 8, 2004, received a special exception (S-2583) for an accessory apartment in their own home, over the Pulajs' objections.

The Pulajs' lot is connected to McKnew Road by a 255 foot long, 10 to 12 foot wide, driveway which is shared with the Tashos. The Tashos' home is in a direct line with the driveway, while in order to reach the Pulajs' property, one must turn to the right after proceeding about 235 feet along the driveway, and go past the Tashos' property for 70 feet to get to the Pulajs' house. The driveway continues on in front of the Pulajs' house for another 70 feet or so, terminating in a two car, gravel parking area. To better understand this case, it is helpful to view a portion of the survey plat (Exhibit 4) which shows both properties and the shared driveway:



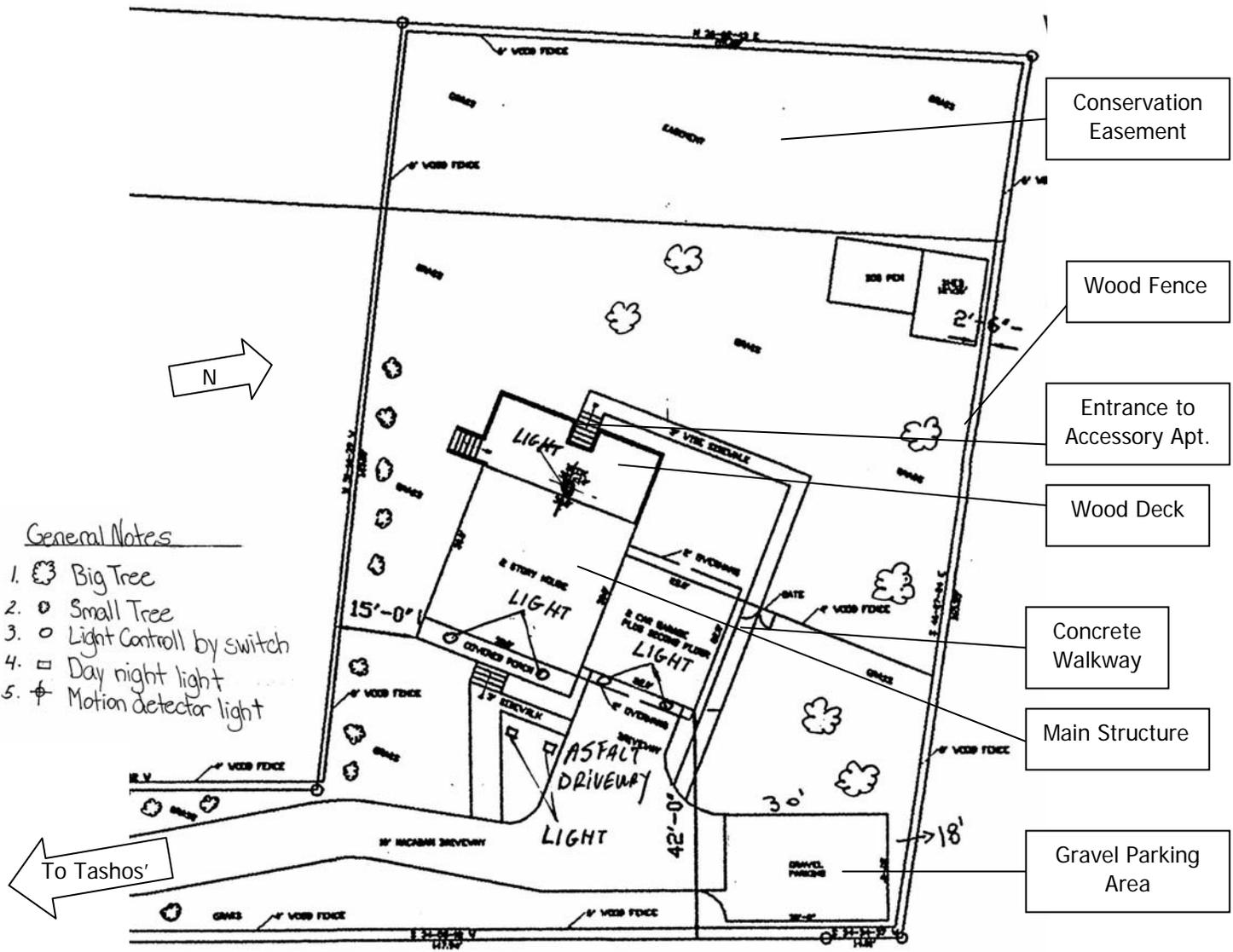
As is apparent from the above plat map, the only portion of the property that fronts on McKnew Road is at the end of the long easement (*i.e.*, the flagpole portion of the lot). The Pulajs have a two story frame house with a covered front porch and an attached two car garage. The house, not including the garage and the rear deck, is 30 feet by 30 feet, giving the first floor and the basement approximately 900 square feet of floor space each.<sup>2</sup> Below is a photo of the front of the house (Exhibit 9(a)):



There is a large fenced in back yard and a concrete walk which runs around the northeast corner of the house from the driveway in front to the accessory apartment entrance in the rear. The revised landscaping and lighting plan, (Exhibit 19(c)), a portion of which is displayed below, shows the layout of the home, as well as the locations of trees, fences, lights, the two-car, gravel parking area on the front side of the house (in the northeast corner) and a 35 foot wide Category 1 conservation easement along the rear (northwest) property line.

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<sup>2</sup> There is additional floor space on the second floor because it extends over the garage.

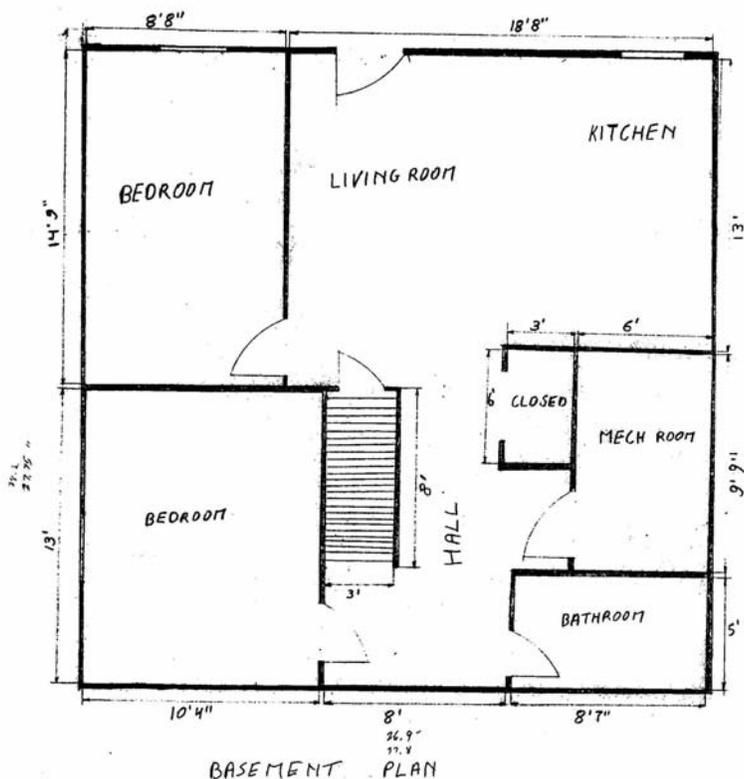


**B. The Proposed Use**

The proposed accessory apartment occupies the entire basement of the house and has a separate entrance at the rear of the home. The gravel parking area shown above in the northeast corner of the lot is 20 feet wide by 20 to 25 feet deep, large enough to park two cars. It will be dedicated to use by the occupants of the accessory apartment. Tr. 5. Access to the accessory apartment is through a gate leading to steps and a door under the deck in the rear of the house, as depicted below in Exhibit 9(d).



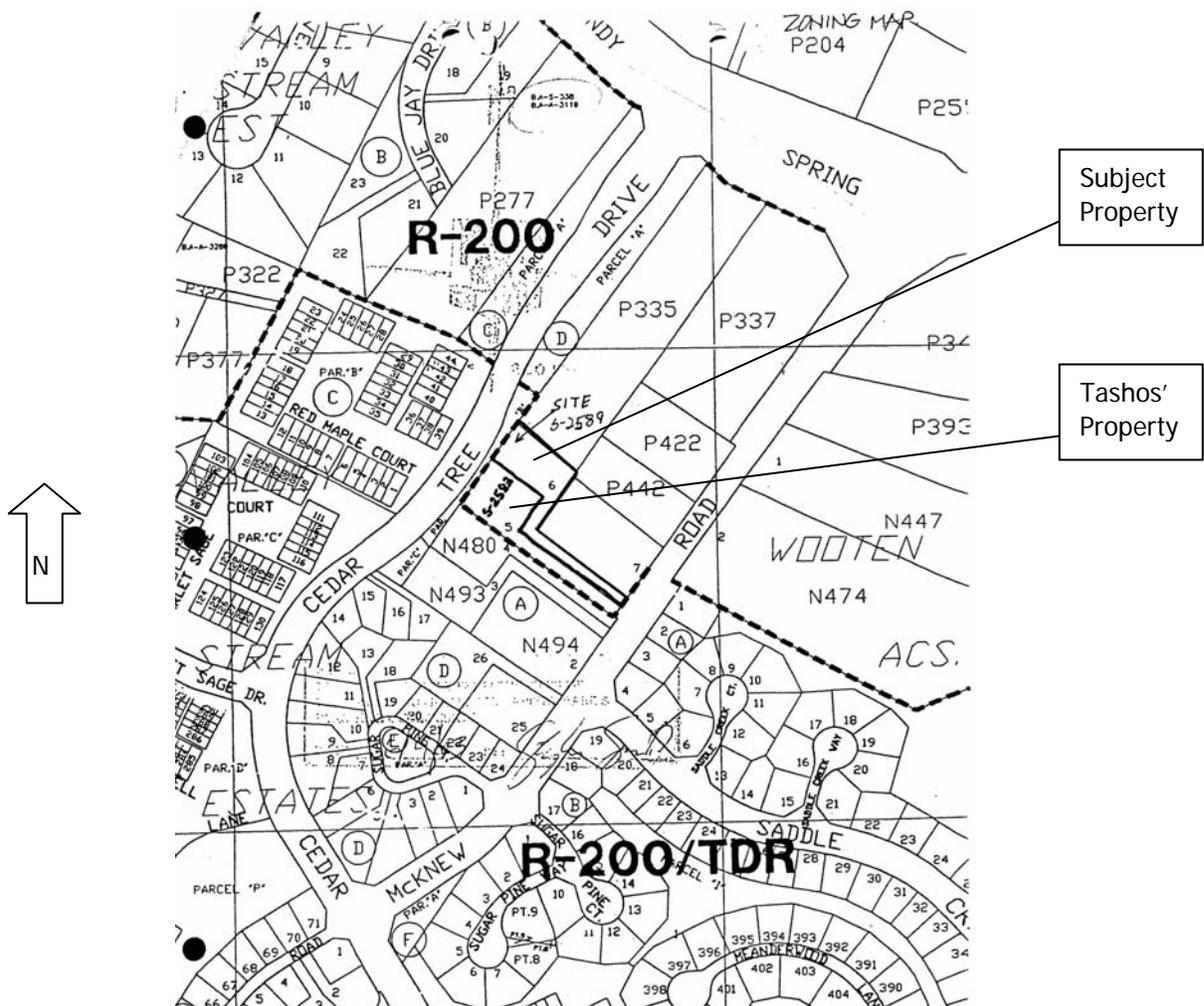
The accessory apartment contains a living room, a kitchen, a bathroom and two bedrooms, all of which occupy about 821 square feet, according to Petitioners. Technical Staff measured the floor space as 783.96 square feet.<sup>3</sup> A copy of the revised accessory apartment floor plan, attached to the February 13, 2004 Technical Staff report (Exhibit 17), is shown below:



<sup>3</sup> The Housing Code Inspector measured 506 square feet of “habitable area.” (Exhibit 14)

### C. The Neighborhood and its Character

The neighborhood is residential in character and consists of mainly one family homes, on land zoned R-200 and R-200/TDR. To the west of the property is Cedar Tree Drive, and to the south are other single family residences. Immediately to the south is the Tasho residence, and to the east is McKnew Road, near the intersection with Saddle Creek Drive. Across McKnew Road from the property is the Laurel Seventh Day Adventist Church. The only other property in the vicinity with an accessory apartment is the adjacent Tasho residence (S-2583). The only additional special exception in the area is a private club located at 4343 Sandy Spring Road (S-338). The Petitioners' property location is noted on the zoning vicinity map, below (Exhibit 10):



#### **D. The Master Plan**

The property is located within the area covered by the *Fairland Master Plan*, approved and adopted in 1997. The *Master Plan* identifies the specific area as “Oakfair/Saddle Creek,” which is discussed on pages 47 through 49 of the Plan. None of the recommendations in that discussion bear on the use of accessory apartments in the area. The *Master Plan* in general sets a goal of “maintaining a wide choice of housing types” and recommends “maximiz[ing] the percentage of single-family detached units in the developable areas” (p. 28). Moreover, because Petitioners plan no external structural modifications to the subject property and because there is sufficient parking to accommodate the proposed use, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single family detached home, is not inconsistent with the applicable *Master Plan*.

In this connection, Technical Staff (Exhibit 13) also quoted a recent study by the MNCPPC noting that:

[accessory apartments] can be an excellent solution to the shortage of affordable housing by producing extra income for homeowners, dispersing the supply of moderate-cost housing more uniformly throughout the community, contributing to the tax base, reducing sprawl by providing more concentrated urban housing opportunities, and providing a means for extended family members to live together in a single site. (Housing Montgomery: A Menu of Options for a Dramatic Increase in the Supply of Housing for our Workforce, 3/6/03, Montgomery County Planning Board Agenda Item #1)

#### **III. SUMMARY OF HEARING**

Two witnesses testified at the February 17, 2004 hearing, Petitioner Brunilda Pulaj and Housing Code Inspector Cece Kinna. Next door neighbor, Franka Tasho, appeared in the middle of the hearing but elected not to participate. Tr. 22.

Brunilda Pulaj:

Mrs. Pulaj testified that Petitioners had done everything that Technical Staff had asked except for the revised site plan and landscaping and lighting plans and that she would be happy to do whatever the County asks. Tr. 5-6.

In questioning by the Hearing Examiner, Mrs. Pulaj testified as to Petitioners' compliance with each of the general and specific standards for obtaining an accessory apartment special exception (Tr. 6-19). Specifically, there would be only one accessory apartment; the apartment would have at least one party wall in common with the main dwelling; the property was purchased in 1995;<sup>4</sup> there is no family of unrelated persons on the premises; there are no guest rooms or boarding houses on the premises; there is a separate entrance for the accessory apartment that preserves the appearance of a single family home; there are no modifications planned to the external part of the house; the accessory apartment would have the same street address as the main dwelling; the accessory apartment would occupy "around 900 [square feet]" (*i.e.*, under 1200 sq ft); the owners, Mr. and Mrs. Pulaj, would occupy the main dwelling; more than a year has elapsed since the owner purchased the property; compensation will be received by Petitioners for only one dwelling unit; the lot, being more than 25,000 square feet, exceeds the 6,000 square foot minimum lot size; the only other accessory apartment in the area she knew of was the Tashos' next door; the two outside parking spaces are solely for the tenant; any problems in sharing the driveway with the Tashos would ultimately be compromised; the accessory apartment use is consistent with the applicable Master Plan; the accessory apartment will be in harmony with the general character of neighborhood; the accessory apartment would not be detrimental to the use, peaceful enjoyment, value or development of the surrounding properties; there would be no objectionable noise,

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<sup>4</sup> Petitioner was apparently mistaken on this point since the deed shows that the property was deeded to Petitioners on April 29, 1997, by the Tashos, who live next door.

vibrations, fumes, odors, dust, illumination, glare or physical activity; the lighting is located in such a way as not to adversely affect the neighbors; there is a fence which is consistent with Montgomery county rules; the accessory apartment would not alter the residential nature of the area, nor would it adversely affect the health, safety, security, morals or general welfare of the residents, visitors or workers in the area; it would be served by adequate public facilities; and it would not reduce the safety of vehicular or pedestrian traffic.

Finally, Mrs. Pulaj testified that Petitioners had completed the changes required in the Housing Code Inspector's report (Exhibit 14). Tr. 19.

Cece Kinna:

Cece Kinna, Housing Code Inspector, testified (Tr. 20-22) that she re-inspected the premises on February 3, 2004, and that the problems noted on her January 2, 2004 report (Exhibit 14) had been abated. Permanent steps had been installed to bring the bedroom windows up to code (*i.e.*, sill height not to exceed 44 inches); a heat source had been provided for the second bedroom; venting had been provided for the utility room; and the hall lighting fixtures had been replaced.

Ms. Kinna also noted that there had been a dispute with the neighbors (*i.e.*, the Tashos) over sharing the single lane driveway (a dispute which Mrs. Pulaj testified was under control).<sup>5</sup> Finally, Ms. Kinna testified that other than the Tashos' accessory apartment, she was not aware of any other accessory apartments in the area. According to Ms. Kinna, there is space in the Pulajs' accessory apartment for no more than two unrelated persons or a family of four (Tr. 21).

At the conclusion of the hearing, the Hearing Examiner gave Petitioners until February 27, 2004 to produce revised site plan and landscape plan required by Technical Staff, and ordered the record held open until March 5, 2004, to receive final comments from the Technical Staff.

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<sup>5</sup> The Hearing Examiner notes that neither the Tashos nor anyone else opposed the current petition.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners had satisfied all the requirements to obtain the special exception, as long as they comply with the recommended conditions (Exhibit 17).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

##### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. 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.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment.

Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Among the characteristics of accessory apartments listed by Technical Staff, are the following that may have adverse impacts: the existence of an additional household on the site, additional activity, more use of the outdoor space, more pedestrian traffic, more parking activity and the potential for additional noise. The undersigned concludes that, in general, an accessory apartment has characteristics similar to a single family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two. That is the case here. There will be no external change to the structure. The Petitioners have agreed to limit the number of vehicles permanently housed outside their garage to two, and have allocated both of their outside off-street spaces to the tenant’s vehicle or vehicles.

In this connection, a few words should be said about the problem caused by the long and narrow driveway the Pulajs share with the Tashos. The Tashos did not object to the Pulajs' petition in this case; however, the shared driveway is still the potential source of future problems. The Pulajs' objection to the Tashos' special exception petition, which was discussed on the record in this case (Tr. 13 -14 and Exhibit 14), was centered around their concern that the neighbor's accessory apartment would generate additional vehicles and therefore might impinge upon their easement. One could certainly argue that the shared driveway problem constitutes an unusual characteristic of the site, thereby creating non-inherent adverse effects from the proposed use; however given that the potential for additional vehicles is an inherent characteristic of accessory apartments in general, and given Petitioners' willingness to provide ample off-street parking for the tenant's vehicles, there are no non-inherent adverse effects which require denial of the petition. Nevertheless, the Hearing Examiner will recommend an additional condition limiting the number of vehicles and prohibiting the Pulajs from parking in the easement, just as that condition was recommended for the Tashos' special exception.

Based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, I conclude that there are no non-inherent adverse effects from the proposed use which would require denial of the petition.

### **B. General Conditions**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony of the Petitioners and the Housing Code Inspector provide ample evidence that the general standards would be satisfied in this case.

#### **Sec. 59-G-1.21. General conditions.**

*§5-G-1.21(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.*

Conclusion: An accessory apartment is a permissible special exception in the R-200 Zone, pursuant to Code § 59-C-1.31.

(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.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment as outlined in Part C, below.

(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 a 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.*

Conclusion: The 1997 *Fairland Master Plan* sets a goal of “maintaining a wide choice of housing types” and recommends “maximiz[ing] the percentage of single-family detached units in the developable areas” (p. 28). Thus, it is fair to say that the planned use, an accessory apartment in a single family detached home, is not inconsistent with the applicable *Master Plan*. Moreover, the Technical Staff noted that the County Council is supportive of mechanisms to provide affordable housing in the County, and accessory apartments are one such mechanism. Thus, the Staff concludes, and I agree, that the

proposed use is consistent with the *Master Plan* and the *General Plan* for development in the County.

- (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.*

Conclusion: The proposed use will be in harmony with the general character of the neighborhood because no structural change to the house or its driveway is proposed. As to parking, the existing dwelling has room for two off-street parking spaces in addition to the space for two cars in its garage. Moreover, the Hearing Examiner will recommend limiting the number of cars permanently housed on their premises to two inside the garage and two outside. Thus, there should be no impact on the neighborhood as far as parking. The proposed use will not generate any significant change in traffic conditions.

- (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.*

Conclusion: There is no evidence in the record to contradict Petitioner's testimony and the Technical Staff's conclusion that there will be no adverse effects on the neighborhood due to the accessory apartment; nor will it be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site. Therefore, the Hearing Examiner so finds.

- (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.*

Conclusion: Based on the nature of the proposed use, the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. As required by the Technical Staff, Petitioners produced a revised Landscaping and Lighting Plan (Exhibit 19(c)) which satisfied Technical Staff that Petitioners' lighting complies with this section and with Zoning Code §59-G-1.23(h). Exhibit 20.

- (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 recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Since there are only two other existing or approved special exceptions in the area (one for a private club and one for an accessory apartment), the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely.

- (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.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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.*

Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

The Technical Staff notes in its Supplemental Report (Exhibit 17) that “[t]he adequacy of public facilities for the one-family detached dwelling on the subject property was determined at the time of subdivision review.”

- (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. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the public facilities review must include analysis of both the Local Area Transportation Review (“LATR”) and the Policy Area Transportation Review (“PATR”). The Technical Staff did do such a review, and it is contained in Transportation Planning Staff’s Memorandum of November 13, 2003 (Exhibit 21). The Transportation Staff concluded that the existing single-family dwelling generates one weekday morning peak hour trip and one weekday evening peak hour trip, and that the proposed accessory apartment use would add one additional trip during those peak periods. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 50 total trips in the weekday

morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study (Exhibit 21). See the July 2002 LATR Guidelines, of which the Hearing Examiner takes official notice.

Turning to the PATR, the FY 2003 Annual Growth Policy (“AGP”) transportation staging ceilings show negative remaining capacity of 3,527 housing units in the Fairland/White Oak policy area as of September 30, 2003 (Exhibit 21). However, because the requested Special Exception will generate fewer than five total weekday morning and evening peak-hour trips, its effect is considered *de minimis* under the AGP. Therefore, the Transportation Staff concludes, as does the Hearing Examiner, that the instant petition meets the PATR test, as well as the LATR test.

- (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.*

Conclusion: The evidence of record (Technical Staff Report, Exhibit 17; Tr. 18) supports the finding that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

### **C. Specific Standards**

The testimony and the exhibits of record [especially the Technical Staff Reports (Ex. 13, 17 and 20) provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

***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.*

**Conclusion:** 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.*

**Conclusion:** The apartment is located in the basement of the main dwelling and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (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.*

**Conclusion:** No addition or extension of the main dwelling is proposed.

- (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.*

**Conclusion:** The original house was built in 1996 (Tr. 7). It therefore meets the “5 year old” requirement.

- (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.*

Conclusion: The proposed use does not violate any of the provisions of this subsection.

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

Conclusion: Access to the accessory apartment is through a rear door to the basement.

There will be no change to the appearance of the dwelling.

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

Conclusion: No external modifications are proposed.

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

Conclusion: The accessory apartment will have 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.*

Conclusion: The accessory apartment is contained within the main dwelling and clearly is subordinate to the main dwelling, as it occupies approximately 821 square feet (784 square feet by Technical Staff's measurement) in the basement of a two-story home.

**59-G § 2.00(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.*

Conclusion: The Petitioners live in the main dwelling and plan to continue living there.

(2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, 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.*

Conclusion: The Petitioners acquired the property in 1997 according to the deed (Exhibit 15), easily more than one year before the filing of the petition.

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

Conclusion: The Petitioners will 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.*

Conclusion: The Petitioners are the owners of the property.

(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.*

Conclusion: Not applicable

#### **59-G § 2.00(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.*

Conclusion: The subject lot is approximately 25,990 square feet in size. The following chart from page 5 of the February 13, 2004, Supplemental Technical Staff Report (Exhibit 17) demonstrates compliance with all development standards:

<b>Development Standard – R-200/Acc. Apt.</b>	<b><i>Required/Allowed</i></b>	<b><i>Provided</i></b>	<b><i>Compliance</i></b>
Maximum Building Height:	2.5 stories or 35 feet	<35 feet (@ 2 stories)	Yes
Minimum Lot Area	20,000 square feet	25,990 square feet	Yes
Minimum width at: Front building line Street line	100 feet 25 feet	107 feet 25.06 feet	Yes Yes
Minimum Setback from Street	40 feet	>230 feet	Yes
Minimum Setback from Adjoining Lot	12 feet (one side) 25 feet (sum of both) 30 feet (rear)	15 feet, 39 feet 44 feet 67 feet	Yes Yes Yes
Maximum building coverage	25%	< 25%	Yes
Maximum Floor Area for Accessory Apartment	1,200 square feet	900 square feet (per site plan) 783.96 square feet (per staff measurement from submitted floor plan)	Yes

*(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: There is only one other accessory apartment currently in the neighborhood. In the opinion of the Technical Staff, this special exception, if granted, will not result in an excessive concentration of similar uses in the general neighborhood. The undersigned agrees.

(3) *Adequate parking must be provided. There must be a minimum of 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 must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: There are four off-street parking spaces, two in a garage and two on a gravel parking area set aside for use by the tenant. Thus, there is sufficient on-site parking to accommodate the proposed use.

#### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. In this case, Ms. Kinna, testifying for that Department, found that Petitioner had corrected all previously noted deficiencies and that the proposed accessory apartment will meet all current standards if occupancy of the accessory apartment is limited to two unrelated persons or a family not to exceed four persons. As noted, Petitioners have agreed to meet this condition.

#### **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2589 for a special exception for an accessory apartment located at 15118 McKnew Road, Burtonsville, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by Petitioners' testimony, representations and exhibits of record;
2. The Petitioners are bound by the condition set out in the Memorandum of Cece Kinna, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13), that

Petitioners will house no more than two unrelated persons or a family not exceeding four persons in the accessory apartment;

3. The Petitioners must make the two spaces on the gravel parking area in the northeast corner of their property available for use by the tenant of the accessory apartment, and at least one of those spaces must be solely for the tenant's use; and

4. The Petitioners must respect the Tashos' easement, must not park in the easement area and must limit the number of vehicles permanently housed on their property to two cars in their garage and two cars on the gravel parking area. When the arrival of guests causes there to be more than two cars outside of the garage, the Petitioners must see to it that the parking of those vehicles does not prevent the Tashos (or their guests) from accessing their own property through the shared driveway, as their easement entitles them to do.

Dated: March 8, 2004

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner