

I. STATEMENT OF THE CASE

Petition No. S-2823, filed on August 15, 2011, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the cellar¹ of an existing single-family home located at 6320 Wiscasset Road in Bethesda, Maryland, on land in the R-90 (Residential, One-family, Detached) Zone. The property's legal description is Lot 15, Block 10 of the Glen Echo Heights Subdivision of Bethesda. The tax account number is 00502304.

The Hearing was scheduled for March 14, 2011, by notice dated September 1, 2011 (Exhibit 9). Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued January 11, 2012, recommended approval of the special exception, with conditions. Exhibit 11.²

The Department of Housing and Community Affairs (DHCA) inspected the property on December 19, 2011. Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated January 5, 2012 (Exhibit 10). Since the accessory apartment has not yet been constructed, the inspector's preliminary report could not determine habitable space nor occupancy limits. Also submitted by DHCA was a memorandum dated January 19, 2012, from Ada DeJesus of DHCA listing two active accessory apartments, one pending registered living unit application and two "exempt" accessory apartments in the area. Exhibit 12.

A public hearing was convened on January 19, 2012, as scheduled, and Petitioner Paul Treseder appeared *pro se*. Also testifying was Inspector Lynn McCreary of the Department of Housing and Community Affairs. Petitioner executed an affidavit of posting (Exhibit 15), and identified photos from the Staff report, a Google map and the submitted plans. He adopted the findings in the Technical Staff Report (Exhibit 11) and in the Housing Code Inspector's Report

¹ Technical Staff referred to the location as the basement of the home; however, Petitioner Paul Treseder indicated that more than half of the height is below grade, and it is therefore more properly referred to as the cellar. Tr. 18-19. His testimony is consistent with the definition of cellars and basements in Zoning Ordinance §59-A-2.1.

² The Technical Staff report is frequently quoted and paraphrased herein.

(Exhibit 10), as Petitioners' own evidence (Tr. 5-6). He also agreed to meet all the conditions set forth in both reports. Tr. 5-6.

The record was held open till January 30, 2012, to await the filing of the transcript and an additional submission from DHCA. While the record was open, Ms. McCreary submitted an e-mail (Exhibit 16) explaining that the use of the term "exempt" to describe some of the other accessory apartments listed in the DeJesus memo of January 19, 2012, means that they were vacant during the most recent DHCA inspection. The record closed, as scheduled, on January 30, 2012.

There is no opposition to this special exception, and the petition meets all of the statutory criteria. The Hearing Examiner therefore recommends that the petition be granted, with conditions.

II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is located at 6320 Wiscasset Road in Bethesda, Maryland in the Glen Echo Heights Subdivision, at the southeast corner of the intersection of Wiscasset Road and Mohican Road. The home is in the R-90 Zone, on a 15,916 square-foot lot, as is depicted in the site plan (Exhibit 3).

Technical Staff described the property as follows (Exhibit 11, pp. 2-3):

The existing house was constructed in 1951. According to Maryland tax records, the one-story home is 3,225 square feet in size. The house is located on relatively flat land with a sharp increase in elevation at the property's southern lot line. The backyard area is mostly clear and is enclosed by fencing. Existing landscaping is relatively well-maintained. There is substantial landscaped screening along Wiscasset Road and to a lesser extent Mohican Road, which effectively screens the existing house and will also serve to screen the proposed entrance to the accessory apartment along Wiscasset. The site has its sole access point from Mohican Road. The home has a driveway with space for two vehicles, and there is space for extra parking via street parking on Wiscasset Road and Mohican Road. . . .

The home can be seen in the following photographs from the Technical Staff report (Exhibit 11, pp. 3 and 4):



Front of House (along Mohican Road)

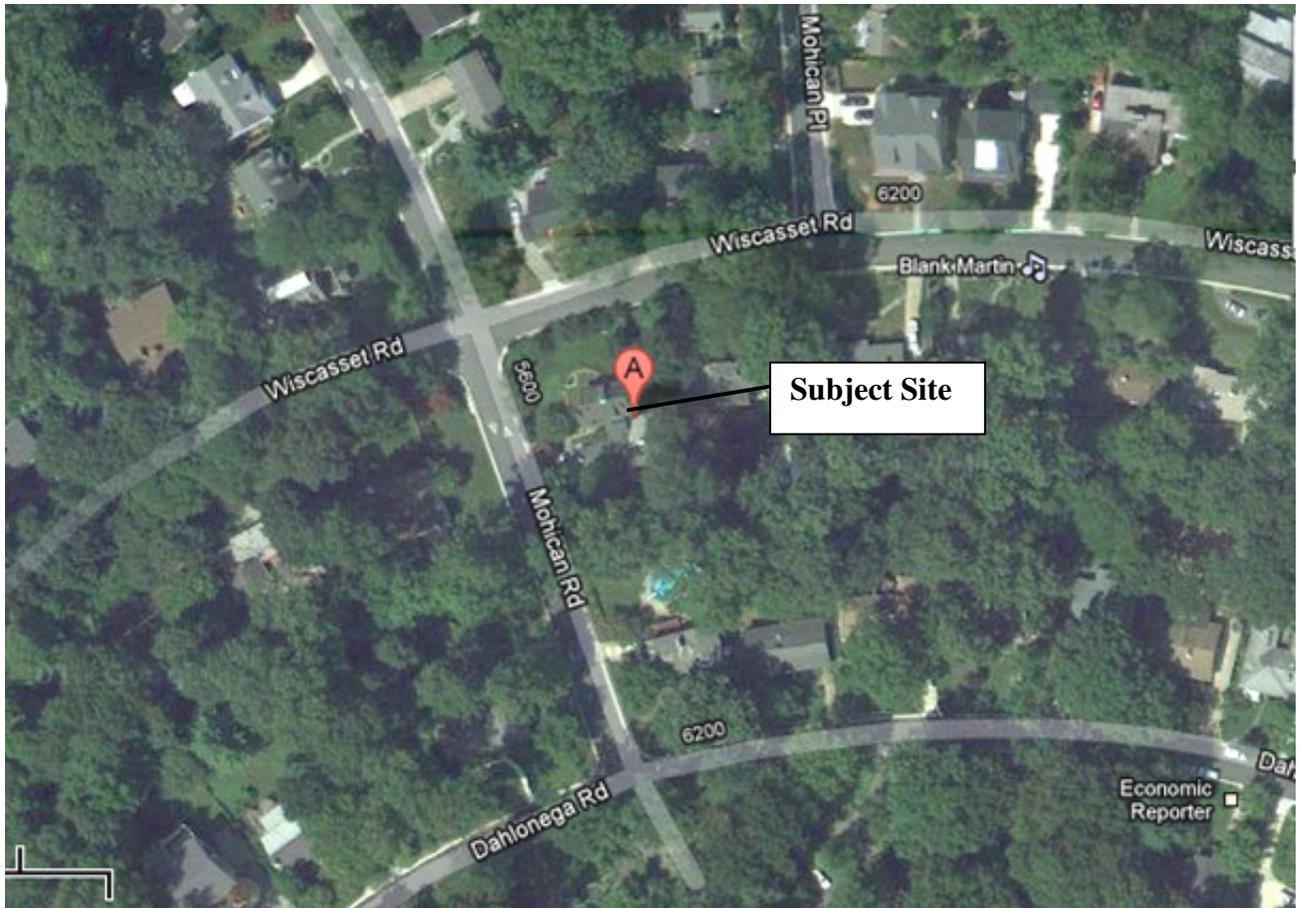


Side of House Facing Wiscasset Road (Proposed Accessory Apt Entrance is Obscured by Trees)

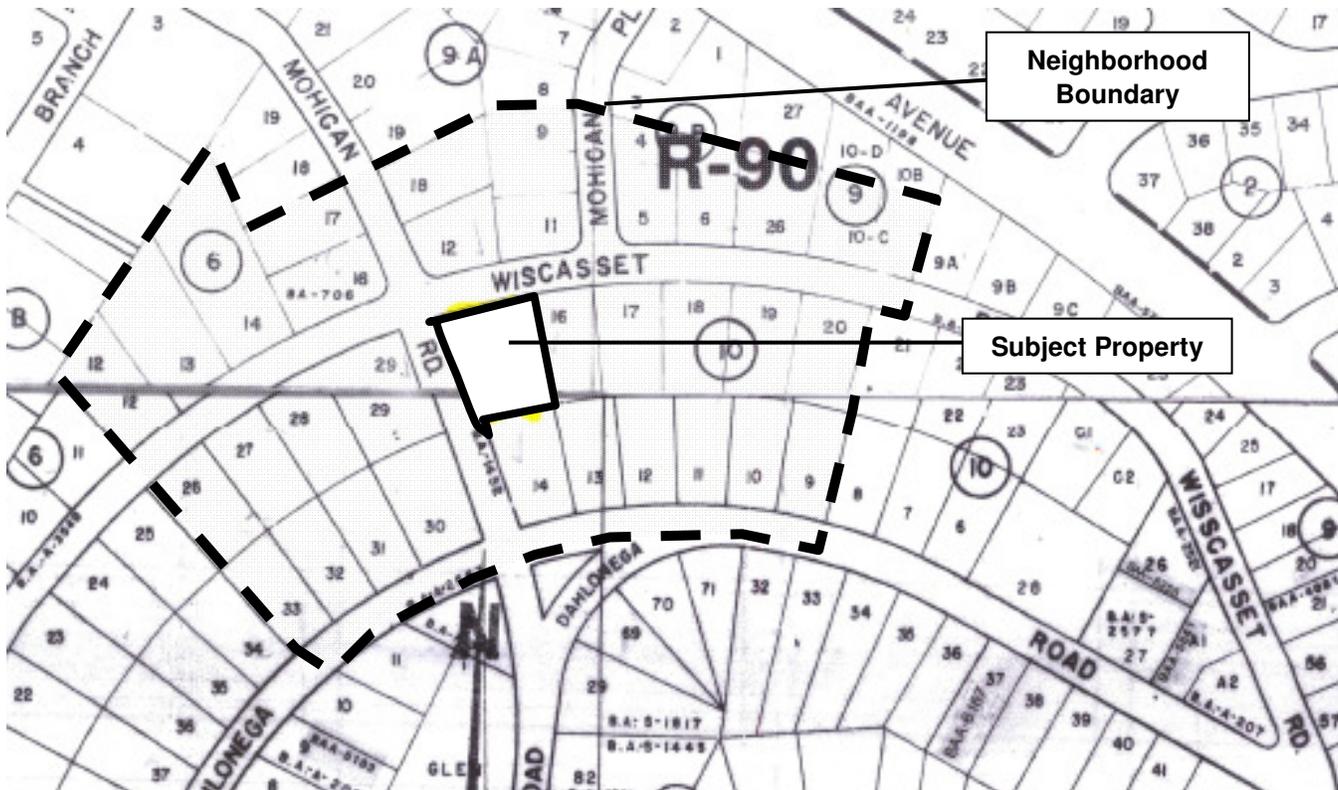


Photo of Home from Intersection of Wiscasset and Mohican

The location of the site is also clearly shown on the following Google Map/aerial photograph (Exhibit 14):



Technical Staff defined the general neighborhood as bounded by the homes on the north side of Wiscasset Road to the north; Dahlongega Road to the South; mid-block through subdivision 10, to the east; and mid-block to subdivision 7 to the west. Exhibit 11, p. 5. Staff explained that its definition was influenced by the “irregular block pattern.” As a result, the neighborhood that surrounds the subject property has been drawn mid-block on the northern, eastern and western neighborhood boundaries. The Hearing Examiner accepts this neighborhood definition, and it is shown on the next page on a Map supplied by Technical Staff (Exhibit 11, p. 5):



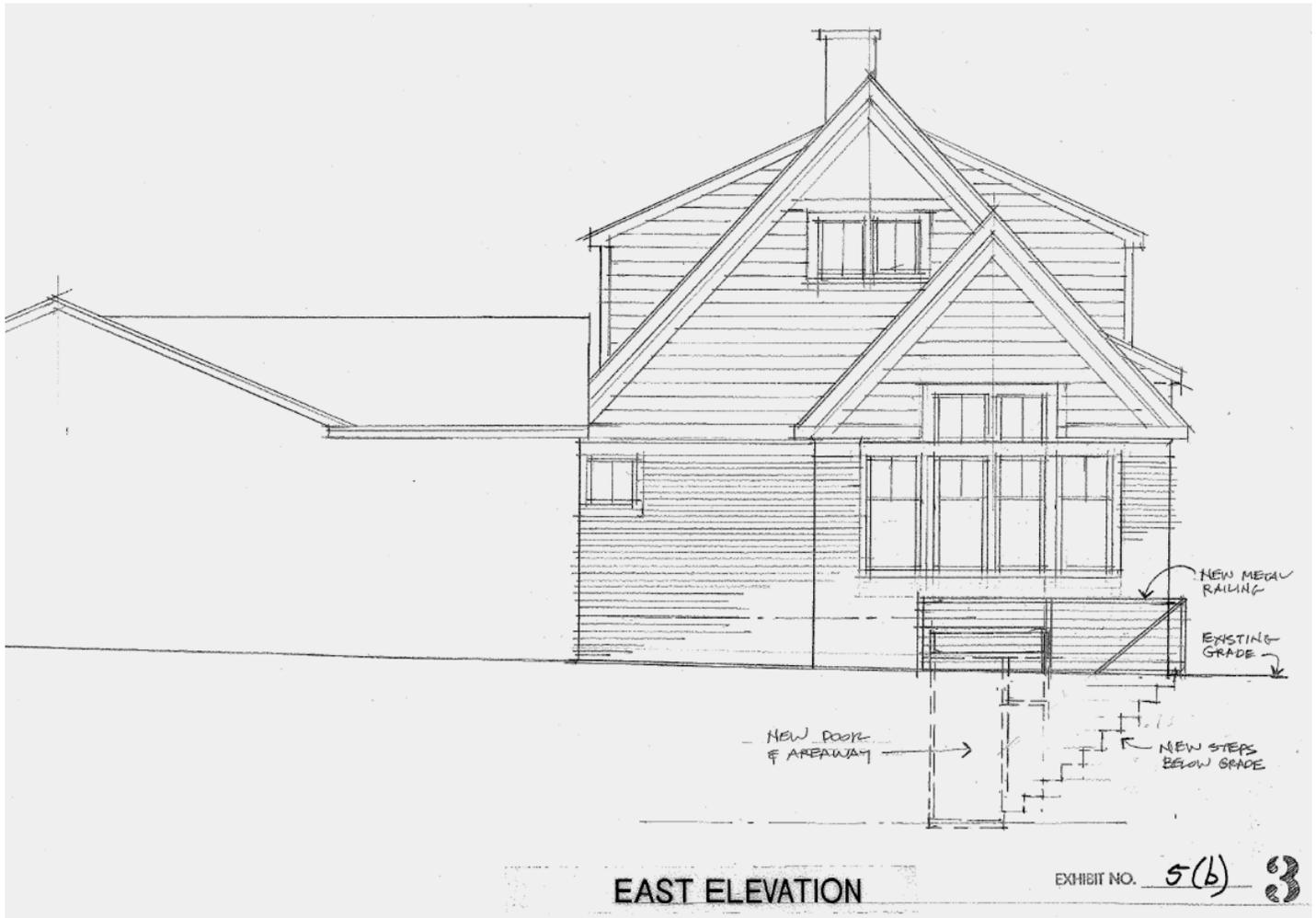
According to Technical Staff, all homes in the neighborhood are single-family detached homes, and the entire neighborhood is zoned R-90. The neighborhood boundary, which is depicted with a dashed line on the above map, has been drawn by Staff to include any nearby properties that may be affected by a potential increase in density or traffic. Staff also reports that no other special exceptions exist within the neighborhood boundaries.³ Exhibit 10, p. 5.

B. The Proposed Use

The Petitioners are seeking a special exception to allow a 517 square-foot accessory apartment in the cellar of their existing home. The apartment entrance will be on the northeast side of the home along Wiscasset Road, as shown in the Site, Landscape and Lighting Plan (Exhibit 3),

³ A memorandum from DHCA specified that there were two active accessory apartments, one pending registered living unit application and two “exempt” [*i.e.*, vacant] accessory apartments in the “vicinity” of the subject site. Exhibit 12. Based on their listed addresses, it appears to the Hearing Examiner that these other units are actually not within the neighborhood, as defined by Technical Staff. The Hearing Examiner therefore accepts Technical Staff’s finding that there are no other special exceptions within the defined neighborhood.

The East Elevation (Exhibit 5(b), shows the proposed access to the accessory apartment:



As noted by Technical Staff, the accessory apartment entrance will be clearly distinct from the entrance to the main dwelling, as the main dwelling’s entrance is located along Mohican Road. Exhibit 11, p. 6. An approximately three-foot wide flagstone pathway will lead from the apartment entrance to Wiscasset Road, which is also shown on the site plan. Petitioner Paul Treseder testified that it is anticipated that the tenant will park along the street near the entrance, where there is plenty of parking available. Tr. 12-13. The availability of on-street parking was confirmed by the Housing Code Inspector. Tr. 15.

Technical Staff concluded (Exhibit 11, p. 6):

The overall net floor area for the apartment will be approximately 517 feet, and will include a bathroom, kitchenette and living areas. There is an existing laundry room in the cellar. The Department of Housing and Community Affairs (DHCA) inspected the property on December 19, 2011, and Housing Code Inspector Lynn McCreary reported her findings in a memorandum dated January 5, 2012 (Exhibit 10). Since the accessory apartment has not yet been constructed, the inspector's preliminary report could not determine habitable space nor occupancy limits. The substance of her report is set forth below:

. . . The Accessory Apartment is to be created in the cellar of the house. The issues regarding Accessory Apartment standards are as follows:

1. The owner must obtain and finalize all applicable plumbing, electrical, HVAC and building permits for the creation of the Accessory Apartment in the cellar of the main house.
2. The Accessory Apartment must be subordinate to the main house and cannot exceed 1200 square feet of livable space.
3. All rooms used for sleeping must have adequate emergency egress.
4. The property must have 2 off street parking places.

Ms. McCreary testified that she sees no reason why the accessory apartment described by Petitioners cannot be constructed as planned. Ms. McCreary confirmed that there is ample on-street parking available and said she saw no reason to deny the special exception. Tr. 15.

Technical Staff discussed the transportation issues at page 7 of their report (Exhibit 11), stating:

The proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance. The existing one-family dwelling is estimated to generate one peak-hour trip during the weekday morning and evening peak-periods and the accessory unit is estimated to generate one additional trip. Since the number of peak hour trips, when combined, will generate fewer trips than the threshold figure requiring a traffic study (30 peak-hour trips), the proposed accessory apartment passes the Local Area Transportation Review (LATR). Policy Area Mobility Review (PAMR) is not required because the accessory apartment will generate less than four new peak-hour trips within the weekday morning and evening peak periods.

Parking for the proposed accessory apartment will be via street parking along Wiscasset Road. Additionally, street parking is also permitted on Mohican

Road. Parking for the main dwelling can be accommodated through the existing driveway from Mohican. Together, there is adequate parking for an additional dwelling unit at this location. The special exception will not have an adverse effect on vehicular and pedestrian access or pedestrian safety. [Footnote Omitted.]

Given this evidence, the Hearing Examiner finds that the proposed accessory apartment will not unduly burden local transportation facilities and that there is adequate parking to accommodate both the owners and the accessory apartment tenant.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause non-inherent adverse effects on the neighborhood warranting denial of the petition.

C. Neighborhood Response

There has been no response from the community, either positive or negative to the subject petition. There is no opposition in the case.

D. The Master Plan

The subject property lies within the area covered by the 1990 Bethesda Chevy Chase Master Plan. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 11, p. 7. However, the Master Plan does recommend special exception uses “that contribute to the housing objectives in the Master Plan” (p. 31, ¶ numbered 4). In fact, the Plan specifically “endorses expanding choices of housing types by provision of accessory apartments” (p. 33, ¶ numbered 4). Since the subject application furthers the Plan’s general guidance, Technical Staff found the proposed use to be consistent with the Bethesda-Chevy Chase Master Plan, as does the Hearing Examiner.

An accessory apartment would maintain the existing scale and type of housing, while providing for additional housing in the area. This accessory apartment would not be visible from the street and therefore would not change the existing structure’s appearance as a single-family dwelling compatible with the surrounding neighborhood.

Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the Bethesda Chevy Chase Master Plan.

III. SUMMARY OF HEARING

At the hearing, testimony was heard from Petitioner Paul Treseder and from Housing Code Inspector Lynn McCreary. There was no opposition.

Paul Treseder (Tr. 5-14; 18-22):

Petitioner executed an affidavit of posting (Exhibit 15), and identified photos from the Staff report, a Google map (Exhibit 14) and the submitted plans (Exhibits 3 and 5). He adopted the findings in the Technical Staff Report (Exhibit 11) and in the Housing Code Inspector's Report (Exhibit 10), as Petitioners' own evidence (Tr. 5-6). He also agreed to meet all the conditions set forth in both reports. Tr. 5-6.

Mr. Treseder further testified that the only external changes to the site would be construction of the access to the accessory apartment, the addition of a residential style light next to the entrance and the construction of a pathway to the entrance. He noted that he has two off-street parking spaces and that there is ample on-street parking, which is where he would expect the tenant to park.

Mr. Treseder noted that the accessory apartment, which is not yet built, would be in the cellar of his home. It is a cellar rather than a basement because more than 50% is below grade.

Housing Code Inspector Lynn McCreary (Tr. 14-18):

Housing Code Inspector, Lynn McCreary, testified that she inspected the premises on March 3, 2011, and that her findings are set forth in her report of December 19, 2011 (Exhibit 10). Tr. 14-15. Since the accessory apartment has not yet been constructed, the inspector's preliminary report could not determine habitable space nor occupancy limits; however, she sees no reason why the

accessory apartment described by Petitioners cannot be constructed as planned.

Ms. McCreary confirmed that there is ample on-street parking available and said she saw no reason to deny the special exception. Tr. 15. At the request of the Hearing Examiner, Ms. McCreary indicated she would submit an e-mail explaining what is meant by the term “exempt,” as used in the DeJesus memo of January 19, 2012, referring to the other accessory apartments listed.

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 Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 11).

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-1.2.1 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-1.2.1. 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.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 11, p. 10):

- (1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) the provision within the apartment of the necessary facilities, spaces, and floor area to qualify as a habitable space under the applicable code provisions;
- (3) a separate entrance and walkway and sufficient exterior lighting;
- (4) sufficient parking;
- (5) the existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) the potential for additional noise.

The Hearing Examiner 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.

Technical Staff found (Exhibit 11, pp. 10-11):

In the instant case, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling and will be screened and non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit will have a separate entrance apart from the main dwelling. The apartment entrance will be typical of a basement-entry to a one-family house, making it difficult to distinguish from any other neighborhood home. The walkway and grounds of the accessory apartment will be safe and illuminated while consistent with typical residential standards.

Parking for the accessory apartment will be sufficient. Here, in addition to driveway parking, there is space for vehicles to park along both Wiscasset Road and Mohican Road, which are both public roads. The parking conditions provide adequate choices to ensure sufficient neighborhood parking even with the existence of an additional household on the block.

Based on these findings, Staff concluded (Exhibit 11, p. 11):

The operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use. There are no non-inherent adverse effects present in this case.

The Hearing Examiner agrees with Staff's assessment. Considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there would be no non-inherent adverse effects from the proposed use.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector's report, the exhibits in this case and the testimony at the hearing 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-90 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 subject property is covered by the Bethesda-Chevy Chase Master Plan, approved and adopted in 1990. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 11, p. 7. However, the Master Plan does recommend special exception uses “that contribute to the housing objectives in the Master Plan” (p. 31, ¶ 4). In fact, the Plan specifically “endorses expanding choices of housing types by provision of accessory apartments” (p. 33, ¶ 4). An accessory apartment would maintain the existing scale and type of housing, while providing for additional housing in the area. Technical Staff therefore found the proposed use to be consistent with the Bethesda-Chevy Chase Master Plan, as does the Hearing Examiner.

(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 accessory apartment will be located in an existing dwelling and will not require significant external changes. It therefore will maintain its residential character. There will be sufficient parking, considering the two driveway spaces for the owners and the on-street parking for the tenants. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are no other accessory apartments in the defined neighborhood, and the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

- (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: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (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: Technical Staff found that “The use will cause no objectionable illumination or glare as the provided lighting is residential in character.” Exhibit 11, p. 13. Since the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (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: As discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature 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.*

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: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 11, p. 14), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review

(LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 11, p. 14. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that "the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic," the Hearing Examiner so finds. Exhibit 11, p. 14.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 11), 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 cellar of an existing house, 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 new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (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 house was built in 1951. Exhibit 11, p. 16. 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 will 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 will preserve the appearance of a one-family dwelling. The apartment entrance will be separate from the main entrance and substantially screened with landscaping. As noted by Technical Staff, the apartment entrance will have the appearance of a typical basement entry to a one-family home. There will thus be no change to the home's residential appearance.

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

Conclusion: The only external improvements planned by Petitioners are to provide access to the accessory apartment, residential lighting for the doorway and a path from the street. Technical Staff found all to be compatible with the neighborhood. Exhibit 11, p. 17.

- (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, at 517 square feet, will clearly be subordinate to the main dwelling, which according to Technical Staff, has a total floor area of 3,225 square feet. Exhibit 11, p. 17.

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 will live in the main dwelling unit on the property.

(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: According to the Maryland Tax Records (Exhibit 16), Petitioners purchased the property in 1997. The one-year rule has therefore been satisfied.

(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 as a condition of the special exception.

(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 15,916 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone. Exhibit 11, p. 8. The following table from the Technical Staff report summarizes the relevant development standards for the application. Exhibit 11, p. 9.

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 stories	1 story + basement	§59-C-1.327
Minimum Lot Area	9,000 sq. ft.	15,916 sq. ft.	§59-C-1.322(a)
Minimum Lot Width at Front Building Line	75 ft.	Approx 150 ft.	§59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	Approx 150 ft.	§59-C-1.322(b)
Minimum Setback from Street (Corner Lot Standard)	15 ft.	25 ft.	§59-C-1.323(a)
Minimum Side Yard Setback	8 ft. one side; sum of 25 ft. both sides	12 ft east side; sum of both n/a because only one side yard with corner lot	§59-C-1.323(b)(1)
Minimum Rear Yard Setback	25 ft.	Approx. 49 ft.	§59-C-1.323(b)(2)
Maximum Building Coverage	30 percent	Approx. 20 percent	§59-C-1.328
Maximum Floor Area for Accessory Apartment	1,200 sq. ft.	517 sq. ft.	§59-G-2.00(a)(9)

(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: As previously stated in this report, the Hearing Examiner concludes that the proposed special exception will not create an excessive concentration of similar uses since there are no other accessory apartments in the neighborhood.

(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: As discussed in Part II.B. of this report, there are two off-street spaces on Petitioners' driveway, and there is ample on-street parking. Technical Staff found that "The subject property provides adequate parking given the off-street driveway parking that is available and the on-street parking found along the two fronting streets." Exhibit 11, p. 19. The Housing Code Inspector agreed. Tr. 15. The Hearing Examiner so finds.

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. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 10) specifies certain conditions. Petitioners have agreed to meet all conditions, and will comply with directives of the Housing Code Inspector. Tr. 5-6.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Susan Vogelsang and Paul Treseder, BOA No. S-2823, which seeks a special exception for an accessory apartment to be located at 6320 Wiscasset Road, Bethesda, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Lynn McCreary, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 10):
 - a. The owner must obtain and finalize all applicable plumbing, electrical, HVAC and building permits for the creation of the Accessory Apartment in the cellar of the main house.
 - b. The Accessory Apartment must be subordinate to the main house and cannot exceed 1200 square feet of livable space.
 - c. All rooms used for sleeping must have adequate emergency egress.
 - d. The property must have 2 off-street parking places.
3. Petitioners must comply with the determination of the Housing Code Inspectors as to limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;
4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
6. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: February 7, 2012

Respectfully submitted,



Martin L. Grossman
Hearing Examiner