

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF: *

PATRICIA KENNELLY AND ROBERT G. *

DREHER *

Applicant *

Patricia Kennelly *

Robert G. Dreher *

For the Application *

OZAH Case No. CU 18-01

Cece Kinna *

Department of Housing and *

Community Affairs *

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On September 29, 2017, Patricia Kennelly (Applicant), filed an application seeking approval of a conditional use to permit an attached accessory apartment in the basement of a one-family detached home at 7122 Sycamore Avenue, Takoma Park, Maryland. The subject property is identified as Lot 6, Block 21 of the Gilbert's Addition Subdivision, located in the R-60 Zone and bearing the Tax Account Number 13-01058016. The Applicant's husband, a co-owner of the property, submitted Power of Attorney authorizing Ms. Kennelly to act on his behalf as Applicant. Exhibit 11.

If a proposed accessory apartment meets the criteria for a limited use under the Zoning Ordinance, an applicant can obtain a license to establish an accessory apartment within a dwelling by applying to the Department of Housing and Community Affairs (DHCA). *See, Montgomery County Code*, §29-19(b)(1)(C). The limited use standards require that the property have a minimum number of on-site parking spaces and that it be a minimum distance from other existing accessory apartments. Approval of a conditional use is required, however, when the property cannot meet on or both of these requirements.¹ *Id.*; *Zoning Ordinance*, §59.3.3.3.A.2.b.² In the R-60 Zone, attached accessory apartments must be separated by a minimum of 300 feet. *Id.* §59-3.3.3.B.2.d.

The Applicant initially filed a license application for a Class 3 Accessory Apartment with DHCA for approval as a limited use. DHCA referred the application to the Office of Zoning and

¹ In this case, the Zoning Ordinance requires three on-site parking spaces for approval as a limited use. Single-family detached homes must have two on-site parking spaces in addition to one on-site space for the accessory apartment. *Zoning Ordinance*, §§59.6.2.4.B; 59.3.3.3.A.2.a.iii.(b). Accessory apartments in the R-60 Zone must be separated by at least 300 feet from any other detached or attached accessory apartment. *Id.*, §59.3.3.3.B.2.d.

² All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County (*Zoning Ordinance*), effective September 30, 2014 (Ordinance No. 17-52), as amended.

Administrative Hearings (OZAH) because another accessory apartment was located within 300 feet. Exhibit 14.

The public hearing before the Hearing Examiner was scheduled for January 8, 2018. Exhibit 20. On December 15, 2017, Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application, subject to three conditions (Exhibit 21, p. 2):

1. The Applicant is bound by all submitted statements and materials of record.
2. The total number of occupants residing in the accessory apartment who are 18 years or older is limited to 2.
3. No other rental residential uses are to be located on the subject site.

Upon review, Staff advised that the proposed apartment had only one on-site parking space, rather than the required three, another basis for requiring conditional use approval. Exhibit 21, p. 11.

Ms. Cece Kinna, Housing Code Inspector III, submitted a report of her inspection of the property on December 21, 2017. Exhibit 22(a). The report listed several actions/improvements needed to bring the apartment into compliance with the Montgomery County Housing Code. *Montgomery County Code*, Chapter 26. Ms. Kinna attached a revised floor plan of the apartment that met the Housing Code. Exhibit 22(a). Ms. Kennelly agreed to comply with that floor plan. T.11.

The hearing went forward as scheduled and the Applicants appeared *pro se*. The Applicants adopted the findings of the Staff Report as their own testimony. T. 6. Ms. Kennelly agreed to comply with all conditions of approval contained in the Staff Report and to make the repairs listed in the Housing Inspector's Report. T. 17.

Ms. Kennelly testified that the home formerly was divided into multiple single-room apartments, only one of which had a full kitchen. That is the unit proposed here for the accessory

apartment. When she and Mr. Dreher purchased the home, they used it as a single-family dwelling. Since their children have left home, they wish to begin using the apartment again. T. 8-9.

Ms. Kennelly also stated that there are typically more than enough parking spaces on the street available for those within 300 feet. T. 6. Many in the area have accessory apartments and they have become part of the character of the existing neighborhood. The apartment next door (within 300 feet) no longer operates, so this will not increase the net number of accessory apartments in the area. They have spoken with both of the neighbors on either side, and the neighbors have no objection to the apartment. T. 8-9.

Ms. Kinna and Mr. Jacob Dye testified for the Department of Housing and Community Affairs. Ms. Kinna testified that the driveway actually has sufficient room for two vehicles to park in tandem if the shrubbery next to the driveway is trimmed. T. 14. When she visited the property for her inspection, there were parking spaces on the street, even with construction vehicles that were working on the house adjacent to the south of the property. T. 15-19. She testified that the revised floor plan attached to her inspection report reversed the “study” and “bedroom” as marked in the original plan. She recommended the revised plan because the window in the room originally marked as a bedroom did not have sufficient net clear opening under the Housing Code. Having the bedroom in the same room as the entrance door resolves this problem. T. 13-14. Ms. Kinna also testified that the Applicants did *not* have to final out several building permits listed in her report, as the case had been administratively closed by the Department of Permitting Services. T. 12. The hearing adjourned on January 8, 2018, but the record was kept open until January 18, 2018, to receive the transcript.

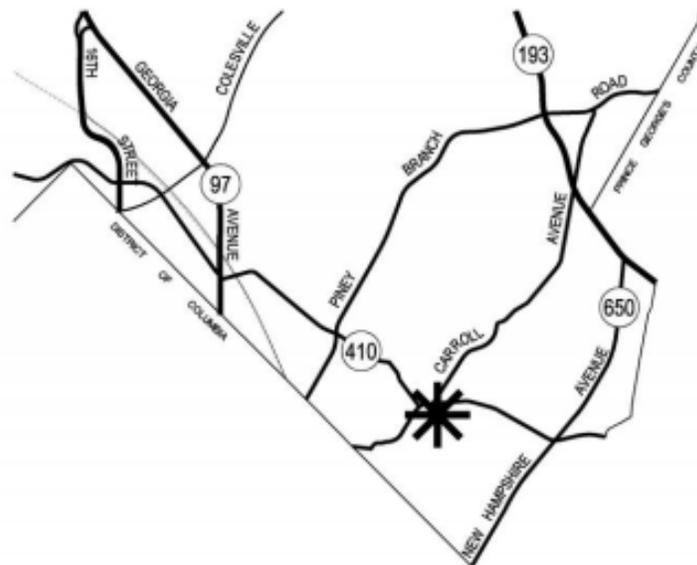
Based on a thorough review of the entire record, the Hearing Examiner finds that the evidence shows that adequate on-street parking available for residents within 300 feet of the

accessory apartment and that the apartment will not cause an overconcentration of similar uses in the neighborhood. Therefore, she grants the Applicants' request for an attached accessory apartment and approves the conditional use application, subject to the conditions listed in Part IV, below.

II. FACTUAL BACKGROUND

A. The Subject Property

The property consists of 8,124 square feet located on the west side of Sycamore Avenue approximately 300 feet south of its intersection with Ethan Allen Avenue (MD 410) in the City of Takoma Park. Exhibit 21, p. 2. It lies within the Takoma Park Historic District. Staff advises that the property has 50 feet of frontage on Sycamore Avenue. *Id.* A vicinity map included in the Staff Report shows the general location of the property (Exhibit 21, p. 1).



Vicinity Map
Exhibit 21, p. 1

Staff reports that the property is improved with a two-story detached house originally constructed in 1921, although records from the Maryland State Department of Assessment and

Taxation (SDAT) state that it was built in 1918. Exhibit 21, p. 3. SDAT records stated that the dwelling has an enclosed area of 2,790 square feet. Exhibit 10. Unrestricted on-street parking is available on the west side of Sycamore Avenue (in front of the subject property), but is prohibited on the east side of Sycamore Avenue between Elm Street and Columbia Avenue. Exhibit 21. An aerial photograph of the property from the Staff Report shows the existing home and the gravel driveway (Exhibit 21, p. 3, below):



Another photograph from the Staff Report (Exhibit 21, p. 4, on the next page) shows the front entrance of the dwelling.

B. General Neighborhood

When a proposed accessory apartment does not meet the minimum distance requirements for a limited uses, the Applicant must demonstrate that it does not result in an overconcentration of similar uses in the “general neighborhood.” *Zoning Ordinance*, §59-3.3.3.A.2.c.ii. That term



has been traditionally defined as the area that will be most directly impacted by the proposed use.

Staff defined the general neighborhood of this apartment as follows (Exhibit 21, p. 4):

The neighborhood boundary, delineated with a blue outline in Figure 3, is drawn to include any properties that may be affected by any potential increase in traffic or density. The neighborhood is generally bound by MD 410 to the north, Woodland Avenue to the east, Elm Avenue to the south and Poplar Avenue to the west. The majority of this neighborhood consists of one-family dwelling units zoned R-60. Properties zoned Neighborhood Retail, N-R 0.75, H-50 are located at the northwest corner of the intersection of MD 410 and Sycamore Avenue contain a municipal parking lot, an automotive repair shop and the Takoma Park-Silver Spring Food Coop. The property to the west and adjacent to the N-R zoned properties is developed with a retail use and zoned Commercial-Residential Town, CRT 2.25, C

1.5, R 0.75 H-50. Both the NR and CRT zoned properties are within the Takoma Park/East Silver Spring Commercial Revitalization (TPESS) Overlay Zone.

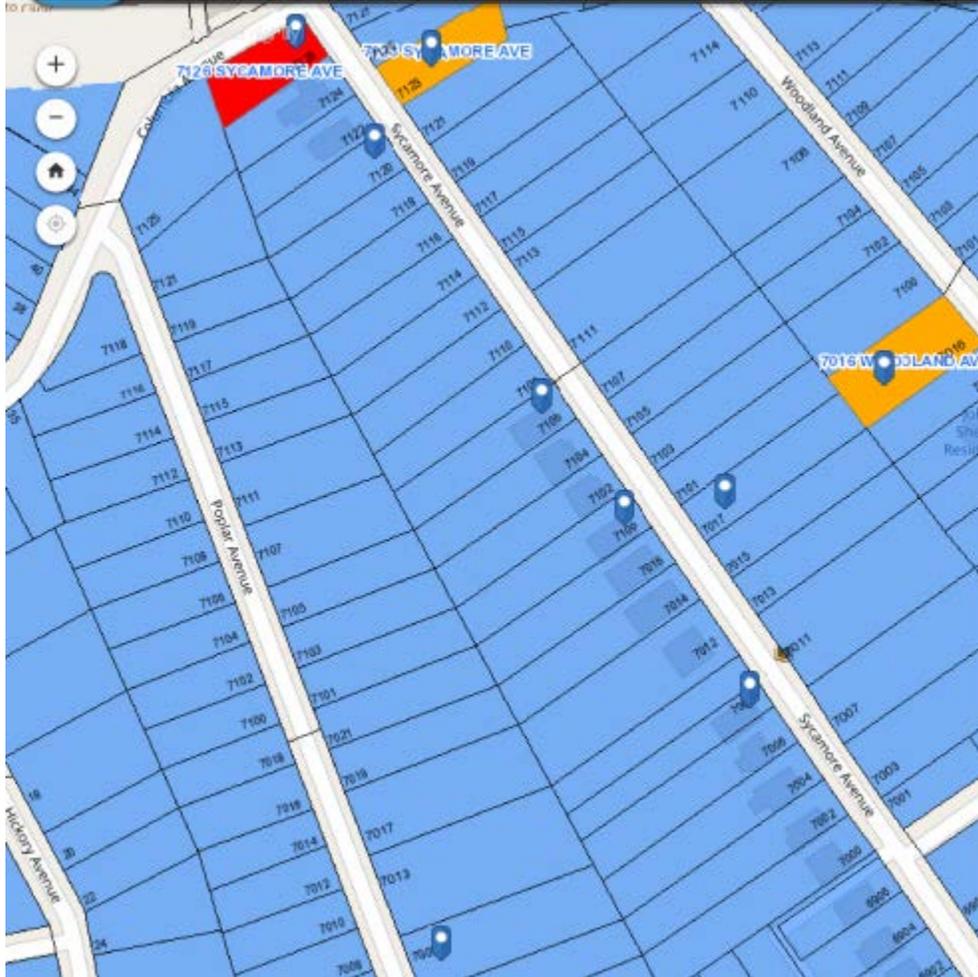
The graphic shown below (*Id.* at 5) depicts the neighborhood described by Staff (outlined in blue):



Staff concluded that there are eight conditional uses within the surrounding area, including the following (*Id.* at 4):

- CBA 2610 located at 7125 Sycamore Avenue for an upholstering use approved on 6/5/69;
- S-1156 located at 7100 Sycamore Avenue for an accessory apartment approved on 10/16/85;
- S-1543 located at 7126 Sycamore Avenue for an accessory apartment approved on 4/6/89;
- S -1419 located at 7106 Sycamore Avenue for an accessory apartment approved on 2/5/90;
- S-939 located at 7120 Sycamore Avenue for an accessory apartment approved 2/6/90;
- S-1525 located at 7017 Sycamore Avenue for an accessory apartment approved on 3/7/90;
- S-2131 located at 7009 Poplar Avenue for an accessory apartment approved on 1/18/95; and
- S-2325 located at 7008 Sycamore Avenue for an accessory apartment approved on 4/24/98.

The following map (Exhibit 23) shows the location of these apartments, which are marked with blue flags:



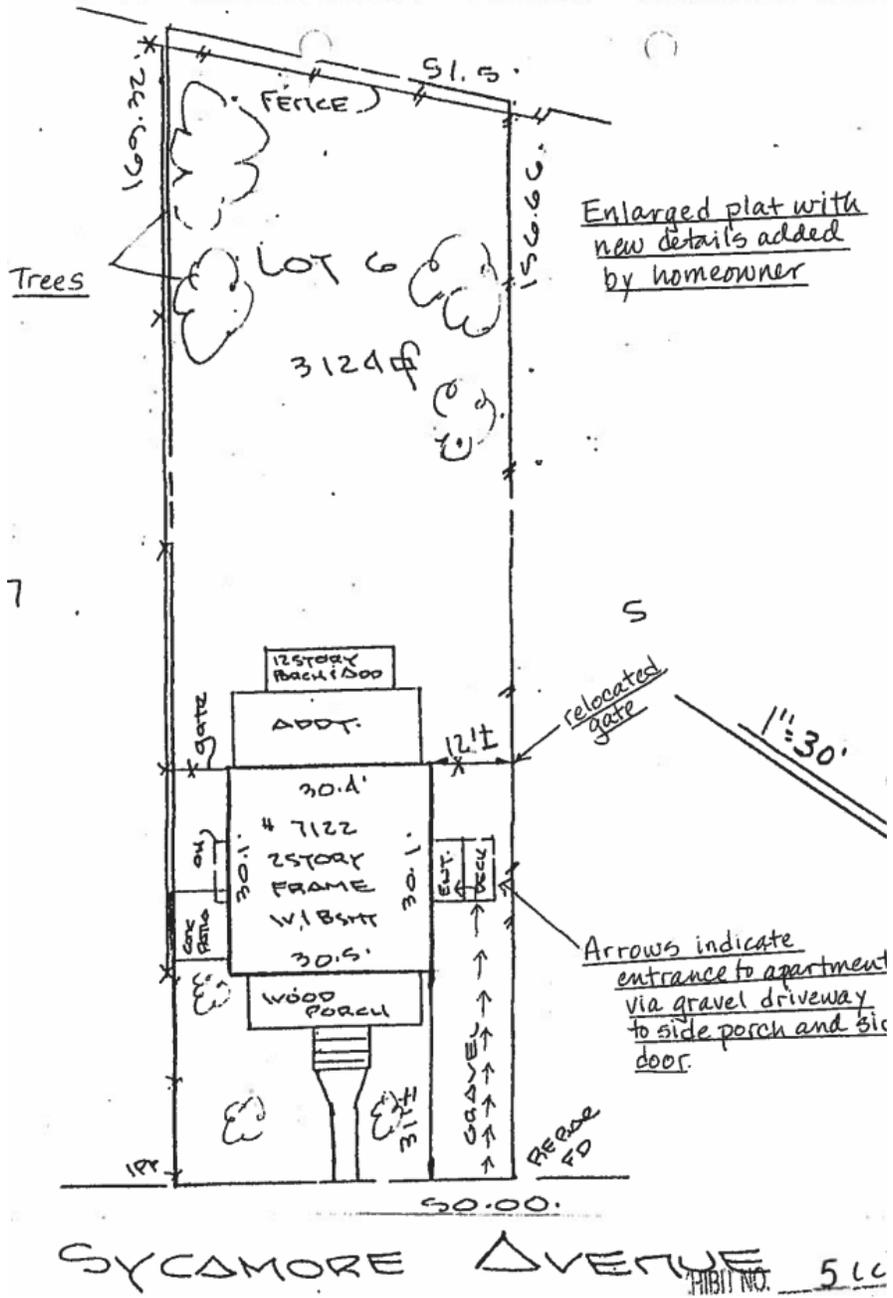
C. The Proposed Use

The Applicant proposes an accessory apartment in the above-grade basement of the existing dwelling. Staff concluded that the apartment will be 800 square feet based on the floor plans submitted by the Applicant. Exhibit 21, p. 5. Ms. Kinna testified that the apartment consists of 1,066 gross square feet based on her on-site measurements. T. 13. The apartment's entrance is from the gravel driveway on the north side of the home. No new exterior changes are needed or

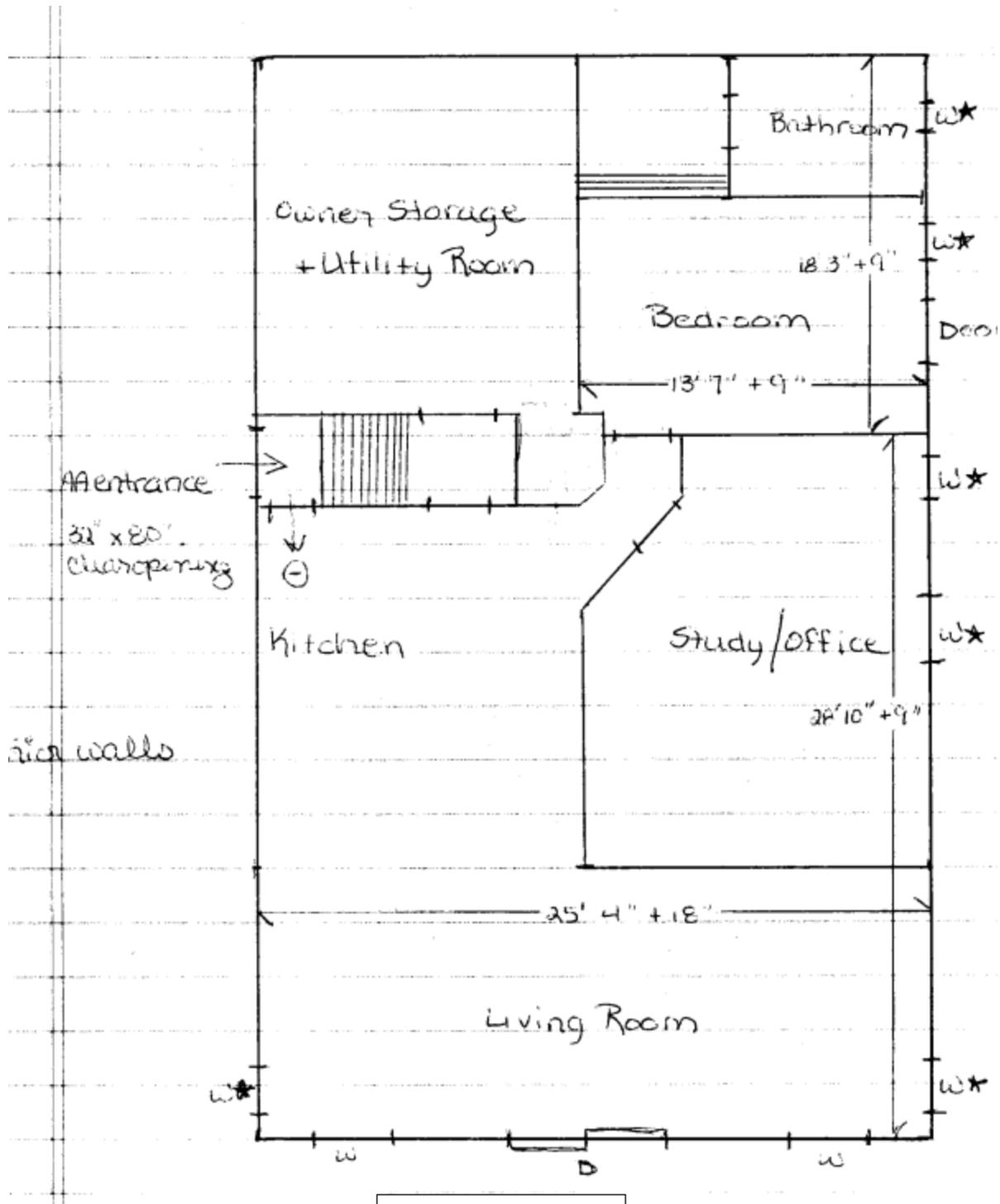
requested for this application. A photograph of the side entrance is shown below (Exhibit 21, p. 6):



The Applicant submitted an enlarged house location survey with hand-drawn additions showing improvements that have occurred since the survey was originally prepared (Exhibit 21, Attachment B, on the following page.) The interior will consist of one bedroom, a study, a combined living room/kitchen and a bathroom. A copy of the floor plan (revised as suggested by the Housing Inspector) is shown on page 12. Exhibit 22(a).



Site Plan
Exhibit 15



Revised Floorplan
Exhibit 22(a)

Ms. Kinna's report lists several permits that were issued in the 1990's, but no final inspections were made. *Id.* She explained the Applicants did not need to final these permits, because they were administratively dismissed at some time in the 1990's. T. 12-13. The report lists the repairs that must be made before receiving a license (Exhibit 22(a), p. 2):

3. Apartment Entrance Stairwell: Install locking device (i.e., deadbolt), on separation door leading to the main house that operates from owners' side only.
4. Apartment Entrance Stairwell: Install locking device on utility room door. Key to remain in owners' possession only.
5. Trim and maintain shrubs alongside the driveway.
6. Remove loose pile of bricks alongside the driveway.
7. Install exterior lighting fixtures to provide adequate lighting from driveway to Accessory Apartment entrance. Motion or photocell fixtures recommended.

At the hearing, the Applicant agreed to make these repairs (T. 11-12), and the completion of these repairs will be made a condition of approval of this application.

D. Community Response

There has been no community response to this application, either for or against. The property lies within the Historic District of the City of Takoma Park. Neither the City nor the Historic District Commission had comments on the application. Exhibit 21, Attachments D and F.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. The legislative standards for accessory apartments were modified by amendments to the 2014 Zoning Ordinance, adopted on December 1, 2015 in ZTA 15-09 (Ordinance No. 18-08) and effective December 21, 2015. The major change was to specify that the general findings required for other kinds of conditional uses "are not applicable to this type of

conditional use.” Section 59.3.3.3.A.2.c. This change eliminated not only general assessments of compatibility and impacts on the neighborhood, but also any evaluation of master plan conformance and compliance with requirements of zone and development standards. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c continue to apply to all accessory apartment conditional use applications, and standards in Section 3.3.3.B.2 apply only to attached accessory apartment applications.

The December 21, 2015 amendments to the Zoning Ordinance did not change the Conditional Use application requirement regarding ownership of the subject property, specified in Section 59-7.3.1.B.1.

A. Ownership of the Subject Property

The application requirements for all conditional uses are set forth in Section 59.7.3.1.B. of the Zoning Ordinance:

1. Ownership:

- a. An applicant must own the subject property or be authorized by the owner to file the application.*
- b. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.*

Conclusion: The Applicant has provided a property tax bill from July, 2016, to prove they own the property. As that document was dated over a year ago, the Hearing Examiner relies on the records from the Maryland State Department of Assessments and Taxation (SDAT) that list her and her husband as the current owners of the property. Exhibits 10. This is sufficient proof that the Applicant owns the property.

B. Use Standards for Accessory Apartments, in General (Section 59-3.3.3.A.)

The Applicant must comply with general standards applicable to all accessory apartments, except that they may deviate from the number of parking spaces normally required if the

conditional use application is approved. *Zoning Ordinance*, §59.3.3.3.A.2.b. When there are fewer than the required number of parking spaces, the Applicant must demonstrate that on-street parking is sufficient to serve the use. *Id.*, §59.3.3.3.A.2.c. Standards pertinent to this approval, and the Hearing Examiner's finding for each standard, are set forth below.

Section 59-3.3.3.A. – Accessory Apartments, In General

1. Defined, In General

Accessory Apartment means a second dwelling unit that is subordinate to the principal dwelling. An Accessory Apartment includes an Attached Accessory Apartment and a Detached Accessory Apartment.

Conclusion: The revised floor plan (Exhibit 22(a)) shows that the attached apartment will have independent eating, sleeping and sanitary facilities. It therefore meets the above definition.

2. Use Standards for all Accessory Apartments

a. Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:

- i. Only one Accessory Apartment is permitted for each lot.*
- ii. The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or*
- iii. The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and*

Conclusion: The Applicant is requesting approval for only one accessory apartment on the subject site. Exhibit 12. Following approval of the conditional use, the Applicant must obtain a license for the accessory apartment from DHCA and from the City of Takoma Park, if needed.

(a) The apartment has the same street address as the principal dwelling;

Conclusion: The accessory apartment will be located in the basement of the dwelling. The Applicant states that it will have the same address as the principal dwelling (7122 Sycamore

Avenue, Takoma Park, Maryland), which is confirmed by Staff. Exhibits 12, 21. The use as proposed meets this requirement.

(b) One on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2 on-site parking spaces must be provided;

Conclusion: The Zoning Ordinance normally requires a total of three on-site parking spaces for an accessory apartment: two spaces for the main dwelling (Section 59-6.2.4.B) plus one for the accessory apartment (Section 59-3.3.3.A.2.a.iii.(b)). Section 59-3.3.3.A.2.b. permits a conditional use to deviate from the on-site parking space requirements if the conditions listed in Section 59-3.3.3.A.2.c. are met. The Staff Report indicates that the driveway has room for only one vehicle. At the public hearing, Ms. Kinna testified that there are actually two parking spaces on the property, which were more visible when the shrubbery is cut back. Because Ms. Kinna physically inspected the site, the Hearing Examiner's finds that the site has two on-site parking spaces rather than one. Whether there is adequate parking is discussed on pages 18-19 of this Report.

(c) The maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling, or 1,200 square feet, whichever is less;

Conclusion: Staff advises that the proposed apartment is 800 square feet while Ms. Kinna reports that the apartment contains 1,066 square feet. Exhibit 21, p. 5; T. 13. As both numbers are less than 50% of the total floor area of the dwelling (i.e., 2,790 square feet) and 1,200 square feet, the Hearing Examiner finds that the proposed apartment meets this requirement without needing to resolve the discrepancy in the square footages given by Staff and the Housing Inspector.

(d) The maximum floor area used for an Accessory Apartment in a proposed addition to the principal dwelling must not be more than

800 square feet if the proposed addition increases the footprint of the principal dwelling; and

Conclusion: The accessory apartment does not require an addition to the home. This standard is not applicable to the application.

(e) The maximum number of occupants is limited by Chapter 26 (Section 26-5); however, the total number of occupants residing in the Accessory Apartment who are 18 years or older is limited to 2.

Conclusion: Conditions listed in Part IV of this Report and Decision limit the total number of occupants to 2 persons who are 18 years or older. A condition of approval will require the Applicant to limit total occupancy to the number determined in the DHCA's inspection report.

iv. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Tenant Dwelling or a Guest House.

Conclusion: The property is zoned R-60 (Residential Detached). Staff recommended a condition of approval that prohibits other rental uses on the property, to which Ms. Kennelly agreed. Exhibit 21, p. 2; T. 17. Such a condition is included in Part IV of this Report and Decision. Therefore, the Hearing Examiner finds that the use as proposed and conditioned will meet this standard.

v. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, this standard is not applicable to this application.

vi. Screening under Division 6.5 is not required.

Conclusion: This section exempts accessory apartments from the screening requirements for conditional uses in Division 6.5 of the Zoning Ordinance.

- vii. *In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

Conclusion: Not applicable. The property is located in the R-60 (Residential Detached) Zone.

- b. ***An Accessory Apartment conditional use application may be filed with the Hearing Examiner to deviate from the following limited use standards;***

- i. *The number of on-site parking spaces; or*

Conclusion: The property has two of the three required on-site parking spaces. For this reason, the Applicant filed this conditional use application seeking approval to deviate from the on-site parking requirements.

- ii. *The minimum distance from any other Attached or Detached Accessory Apartment*

Conclusion: The property does not meet the minimum distance required from other accessory apartments. While Ms. Kennelly testified that the apartment adjacent to the property is no longer in use, there is one other accessory apartment within 300 feet to the north. Exhibit 21, p. 10. Whether the addition of this apartment will result in an overconcentration of these uses in the general neighborhood is discussed on the next page.

- c. *Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1 E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to the Attached accessory Apartment applications and the limited use standards of Section 3.3.3.C.2 apply to the Detached Accessory Apartment applications.*

- i. *Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:*

(a) the available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular basis; and

(b) the proposed Accessory Apartment is likely to reduce the available on-street parking within 300 feet of the proposed Accessory Apartment.

Conclusion: Staff advises that the property has 50 feet of frontage on Sycamore Avenue and the west side of the street permits unrestricted on-street parking. According to Staff, this amount of frontage will permit two average size cars to park directly in front of the property, an adequate number to support the use. *Id.*, p. 5. Ms. Kennelly testified that there is normally “plenty” of parking on the street. Ms. Kinna reinforced this assessment, testifying that, during her visit, there was room for two County vehicles and several construction vehicles to park near the home. T. 15-16. Based on this evidence, the Hearing Examiner finds that on-street parking is regularly available to residents within 300 feet of this property and that the accessory apartment

ii. When considered in combination with other existing or approved Accessory Apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.

Conclusion: There are nine accessory apartments in the defined neighborhood, although Ms. Kennelly testified that the one adjacent to her home is no longer being rented. T. 9. Staff found that the addition of this one did not result in an overconcentration of these uses in the neighborhood (Exhibit 21, p. 11):

The approval of an attached accessory apartment in the R-60 zone requires a 300-foot distance separation between accessory apartments. Research of the files indicated that seven of the approved conditional uses in the delineated neighborhood were approved for accessory apartments. However, only two of the approved conditional uses (S-939 and S-2864) are located within the 300-foot minimum distance requirement of the subject site. The neighborhood is overwhelmingly residential in character and consists of over 120 one-family residences. Accessory apartments are deemed a compatible accessory use to a primary residential use. The proposed use will maintain the residential character of this historic neighborhood. Thus, approval of the requested conditional use will not create an excessive concentration of similar uses in the general neighborhood as the

appearance of the existing one-family residence in the Takoma Park Historic District will remain unchanged and will retain its residential appearance with nearby residential uses.

Conclusion: The Hearing Examiner agrees that the addition of this accessory apartment will not result in an overconcentration of similar uses. First, Staff opinion assumed that there are nine apartments in the area, while the one immediately next door is no longer rented. The Hearing Examiner also finds Mr. Dreher's testimony persuasive. He stated that the character of the neighborhood consists of older, large single-family detached homes close to the Metro. Thus, accessory apartments are part of the character of the neighborhood, rather than being the exception.

C. Use Standards for Attached Accessory Apartments (Section 59-3.3.3.B)

Section 59-3.3.3.B. – Attached accessory Apartment

1. *Defined*

Attached Accessory Apartment means a second dwelling unit that is part of a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. An Attached Accessory Apartment is subordinate to the principal dwelling.

2. *Use Standards*

Where an Attached accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:

a. A separate entrance is located:

- i. On the side or rear of the dwelling;*
- ii. At the front of the principal dwelling, if the entrance existed before May 20, 2013; or*
- iii. At the front of the principal dwelling, if it is a single entrance door for the use of the principal dwelling and the Attached accessory Apartment.*

Conclusion: The photographs of the property (shown in Part II.C. of this Decision) demonstrate that there is a separate entrance to the accessory apartment located on the side of the dwelling

bordering the gravel driveway, as does Ms. Kinna's testimony and the revised floor plan. (Exhibit 22(a)). The Hearing Examiner finds that this standard has been met.

- b. The detached house 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 the application for a license or a conditional use.***

Conclusion: According to the SDAT records, the existing dwelling was built in 1918. Exhibit 10. Staff concluded that the house was built in 1921, although Staff's Report does not reveal the basis for this conclusion. Exhibit 21, pp. 3, 12. Either date is well more than five years prior to date this application was filed (i.e., September 29, 2017), and the Hearing Examiner finds that this condition has been met.

- c. In the RE-2C, RE-1, and R-200 zones the Attached Accessory Apartment is located at least 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.***

Conclusion: The property is located in the R-60 (Residential Detached) Zone. This standard is not applicable to this case.

- d. In the RNC, R-90, and R-60 zones the Attached accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.***

Conclusion: Because the property is zoned R-60, this section is applicable. As discussed above, there are two accessory apartments within 300 feet of this property, necessitating this conditional use application. For the reasons already set forth, the Hearing Examiner finds that a deviation in the minimum distance will not alter the existing residential character of the neighborhood.

In sum, the application satisfies all of the applicable use standards in Code §59.3.3.3.A. and B.

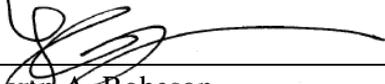
IV. CONCLUSION AND DECISION

Weighing all the testimony and evidence of record, the Hearing Examiner concludes that the Applicant has shown by a preponderance of evidence that the conditional use proposed in this application, subject to the conditions set forth below, will satisfy all of the requirements for an accessory apartment. *See, Zoning Ordinance, §59-7.1.1.*

Based on the foregoing, the application of Patricia Kennelly and Robert G. Dreher (CU 18-01), for a conditional use under Section 59-3.3.3.A. and B. of the Zoning Ordinance to operate an attached accessory apartment at 7122 Sycamore Avenue, Takoma Park, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The total number of occupants residing in the accessory apartment who are 18 years or older is limited to 2;
 2. No other rental residential uses are allowed to be located on the subject site;
 3. The Applicant must make those repairs listed as items 3 through 7 in the Housing Inspector's Report (Exhibit 22(a));
 4. The Applicant must obtain an accessory apartment license from the Department of Housing and Community Affairs under Section 29-19 of the Montgomery County Code.
 5. The Applicant must comply with any directions of the Housing Code Inspector to ensure safe and code-compliant occupancy; and
1. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 19th day of January, 2018.



Lynn A. Robeson
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c. The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Notifications To:

Patricia Kennelly and Robert Dreher
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Kathy Reilly, Planning Department
Cece Kinna, Housing Code Inspector
Ehsan Motazed, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Alexandre A. Espinosa, Director, Finance Department
Charles Frederick, Esquire, Associate County Attorney