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Transcript of Administrative Hearing

Date: February 5, 2018

Case: Richard Newell Accessory Apartment

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5	In Re: : Case No.	4	TESTIMONY OF RICHARD NEWELL 12
6	RICHARD NEWELL : CU 18-03	5	
7	ACCESSORY APARTMENT :	6	E X H I B I T S
8	- - - - -x	7	(None)
9		8	
10		9	
11	HEARING	10	
12	Before Hearing Examiner Lynn A. Robeson	11	
13	Rockville, Maryland	12	
14	February 5, 2018	13	
15	11:30 a.m.	14	
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23	Job: 176870	22	
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2	A P P E A R A N C E S	2	P R O C E E D I N G S
3	RICHARD NEWELL, Petitioner	3	HEARING EXAMINER LYNN ROBESON: Okay. I'm calling the
4	6412 Ridge Road	4	case of CU 1803, the application of Richard Newell for an
5	Bethesda, Maryland	5	accessory apartment at 6412 Ridge Road, Bethesda Maryland.
6		6	My name's Lynn Robeson, I'm the Hearing Examiner which means
7	CECE KINNA, Housing Code Inspector	7	I'll take all the evidence and testimony today. If you
8	DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS	8	disagree with my decision you can request oral argument from
9		9	the Board of Appeals within 10 days of the date of the
10	JORDAN DYE, Housing Code Inspector	10	decision. We're starting at 11:30 today because the
11	DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS	11	Montgomery County Schools were closed for weather related
12		12	reasons. Can everyone state their name and address for the
13		13	record beginning with you, Mr. Newell.
14		14	MR. RICHARD NEWELL: Richard Newell, 6412 Ridge Drive
15		15	in Bethesda, Maryland.
16		16	HEARING EXAMINER ROBESON: Thank you.
17		17	MS. CECE KINNA: Cece Kinna, Housing Code Inspector
18		18	with the Department of Housing and Community Affairs.
19		19	MR. JORDAN DYE: Jordan Dye, Housing Code Inspector
20		20	with the Department of Housing and Community Affairs.
21		21	HEARING EXAMINER ROBESON: Okay. Thank you. Mr.
22		22	Newell, do you have an Affidavit of posting with you?
23		23	MR. NEWELL: Yes. For my wife, is that the one you're
24		24	talking about for --
25		25	HEARING EXAMINER ROBESON: No, for the sign.

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<p>5</p> <p>1 MR. NEWELL: Uh --</p> <p>2 HEARING EXAMINER ROBESON: Has a sign been posted?</p> <p>3 MR. NEWELL: Oh yes, it has been. Yeah. Do you need</p> <p>4 this?</p> <p>5 HEARING EXAMINER ROBESON: Okay. We have a form and</p> <p>6 OZA will get it to you after the hearing. And it has to be</p> <p>7 notarized, but there should be a notary in the Court of</p> <p>8 Appeals.</p> <p>9 MR. NEWELL: I see I -- yes. So should I deliver that</p> <p>10 to -- I didn't realize I had to fill something out. That</p> <p>11 sign has been posted.</p> <p>12 HEARING EXAMINER ROBESON: Yes. I understand. We just</p> <p>13 need the affidavit that it's been posted before this. I'm</p> <p>14 not doubting you. We just need it.</p> <p>15 MR. NEWELL: Okay.</p> <p>16 HEARING EXAMINER ROBESON: Okay. So after we adjourn</p> <p>17 why don't you -- let me just -- I'm going to go off the</p> <p>18 record and make sure our notary sticks around so you don't</p> <p>19 have to wait any longer.</p> <p>20 (OFF THE RECORD)</p> <p>21 (ON THE RECORD)</p> <p>22 HEARING EXAMINER ROBESON: These proceedings are</p> <p>23 informal but they do have a certain formality. Testimony is</p> <p>24 under oath so what I'm going to do is ask you all -- I'm</p> <p>25 going to swear you in at once, please. So please raise your</p>	<p>7</p> <p>1 to give you a chance at the end to make some -- any comments</p> <p>2 you want to make. But I do want to ask the Housing</p> <p>3 Inspector, what's the purpose of the revised floor plan?</p> <p>4 Was the apartment too big?</p> <p>5 MS. KINNA: No. Mr. Newell just, I think submitted it</p> <p>6 to make a clearer view of the layout. What was not included</p> <p>7 first is what is in the -- what is part of the apartment.</p> <p>8 It's a little clearer than the initial drawing that was</p> <p>9 submitted, that's all.</p> <p>10 HEARING EXAMINER ROBESON: Well, I noticed that it</p> <p>11 looked to me like, and maybe I'm wrong, but it eliminated a</p> <p>12 second bedroom.</p> <p>13 MS. KINNA: Basically, yeah. It could be a bedroom or</p> <p>14 storage area.</p> <p>15 HEARING EXAMINER ROBESON: Well, the only thing is</p> <p>16 based on your measurements, there's a limit on the square</p> <p>17 footage of accessory apartments to 1200 square feet.</p> <p>18 MS. KINNA: Right.</p> <p>19 HEARING EXAMINER ROBESON: With --</p> <p>20 FEMALE VOICE: There's a notary in Councilman</p> <p>21 Leventhal's office, and Councilman Bryson's office.</p> <p>22 HEARING EXAMINER ROBESON: Okay. Great. Thank you.</p> <p>23 FEMALE VOICE: You're welcome.</p> <p>24 HEARING EXAMINER ROBESON: This has been a</p> <p>25 discombobulated day. But anyway, so I guess what I'm asking</p>
<p>6</p> <p>1 right hand. Do you solemnly or affirm under penalties of</p> <p>2 perjury that the statements you are about to make are the</p> <p>3 truth, the whole truth and nothing but the truth?</p> <p>4 MS. KINNA: I do.</p> <p>5 MR. NEWELL: I do.</p> <p>6 MR. DYE: I do.</p> <p>7 HEARING EXAMINER ROBESON: Okay. Thank you. Now, Mr.</p> <p>8 Newell, there's a lot of technical requirements for this, as</p> <p>9 you know. So to simplify things I'm going to ask you, have</p> <p>10 you had the opportunity to read the Staff Report?</p> <p>11 MR. NEWELL: Yes.</p> <p>12 HEARING EXAMINER ROBESON: Which is Exhibit -- I think</p> <p>13 it's 19 in this case. They go through all the standards and</p> <p>14 criteria. Do you wish to adopt the facts and the</p> <p>15 recommendations of the Staff Report as your own testimony?</p> <p>16 MR. NEWELL: Yes.</p> <p>17 HEARING EXAMINER ROBESON: Are there any inaccuracies</p> <p>18 in it that you need to correct?</p> <p>19 MR. NEWELL: No. I did not see any inaccuracies.</p> <p>20 HEARING EXAMINER ROBESON: Okay. And the Staff also</p> <p>21 has two conditions of -- the two conditions are that you can</p> <p>22 only have no more than two adults over 18 and no other</p> <p>23 rental residential -- rental uses on the property.</p> <p>24 MR. NEWELL: Yes, I agree with those conditions.</p> <p>25 HEARING EXAMINER ROBESON: Okay. If I may, I'm going</p>	<p>8</p> <p>1 you, Mr. Newell, is if you use that second -- well, what's</p> <p>2 labeled on the revised plan as a storage area, if you use it</p> <p>3 for the apartment you're over the 1200 square feet, which</p> <p>4 would be prohibited. So my question is, do you agree to</p> <p>5 abide by this revised floor plan as a condition of approval?</p> <p>6 MR. NEWELL: Yes.</p> <p>7 HEARING EXAMINER ROBESON: Because it only has the one</p> <p>8 bedroom.</p> <p>9 MR. NEWELL: Yes, I do.</p> <p>10 HEARING EXAMINER ROBESON: Okay. All right. Thanks.</p> <p>11 Ms. Kinna, do you want to say anything else about the</p> <p>12 availability of parking, or the results of your inspection?</p> <p>13 MS. KINNA: Sure. I can summarize my report here. In</p> <p>14 addition on that day there was three of us that -- from our</p> <p>15 office. We had three vehicles that showed up. Now I was</p> <p>16 able to pull into the small parking area. There's really</p> <p>17 enough room for one.</p> <p>18 HEARING EXAMINER ROBESON: The concrete pad? Yeah.</p> <p>19 MS. KINNA: One vehicle off street and the other two</p> <p>20 had no problems with parking. And there's a -- I've been on</p> <p>21 that road several times. There seems like there's always</p> <p>22 some type of construction going on somewhere. So there's</p> <p>23 always contractor vehicles. So we were there mid day, there</p> <p>24 was really no problem. We might have parked two houses down</p> <p>25 and --</p>

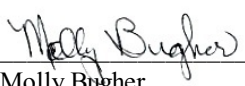
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3 (9 to 12)

<p>9</p> <p>1 HEARING EXAMINER ROBESON: When you say you, you mean?</p> <p>2 MS. KINNA: I'm sorry. Jordan, he is with me and</p> <p>3 observing today. But I recall that he was parked a couple</p> <p>4 of houses down.</p> <p>5 HEARING EXAMINER ROBESON: Okay.</p> <p>6 MS. KINNA: But on the road.</p> <p>7 HEARING EXAMINER ROBESON: Okay.</p> <p>8 MS. KINNA: It's a one-way road at that point anyway.</p> <p>9 HEARING EXAMINER ROBESON: Okay.</p> <p>10 HEARING EXAMINER ROBESON: So it's not two-way traffic</p> <p>11 going by or anything.</p> <p>12 HEARING EXAMINER ROBESON: Okay.</p> <p>13 MS. KINNA: So basically --</p> <p>14 HEARING EXAMINER ROBESON: So tell me again why you</p> <p>15 shaded out that second bedroom? It wasn't because it was</p> <p>16 too large. It was because that's not really the way it's</p> <p>17 being used?</p> <p>18 MS. KINNA: Correct. That wouldn't be for any tenant</p> <p>19 usage.</p> <p>20 HEARING EXAMINER ROBESON: Okay. And anything else you</p> <p>21 -- I think I stopped you from going through your report.</p> <p>22 MS. KINNA: No. That's okay. Just the inspection that</p> <p>23 was conducted January 29th. There are two -- the two lowest</p> <p>24 levels of the home are the apartment. It's more like a</p> <p>25 sunken rec room --</p>	<p>11</p> <p>1 MR. NEWELL: -- that's why there's a slight difference.</p> <p>2 HEARING EXAMINER ROBESON: I apologize. Okay.</p> <p>3 MR. NEWELL: Yeah.</p> <p>4 HEARING EXAMINER ROBESON: I see and your report says</p> <p>5 1124.</p> <p>6 MS. KINNA: Correct.</p> <p>7 HEARING EXAMINER ROBESON: Okay. I get it. Keep</p> <p>8 going.</p> <p>9 MS. KINNA: Okay. Initially when the owners had</p> <p>10 applied for a Class III they had been denied due to the fact</p> <p>11 that there was an already existing accessory apartment at</p> <p>12 6430 Ridge Drive, less than 300 feet division between the</p> <p>13 property lines and so they were referred to OZA. There is</p> <p>14 -- all the work that has been completed on the premises</p> <p>15 appears to have been done with permits.</p> <p>16 HEARING EXAMINER ROBESON: Yay.</p> <p>17 MS. KINNA: So there's no outstanding permits involved.</p> <p>18 HEARING EXAMINER ROBESON: Thank you Mr. Newell.</p> <p>19 MS. KINNA: And the only other thing I noted is a</p> <p>20 concern about adequate exterior lighting for --</p> <p>21 HEARING EXAMINER ROBESON: Oh, for the side entrance?</p> <p>22 MS. KINNA: Correct. There -- as I recall there is a</p> <p>23 street light. Unless something, somebody parked a certain</p> <p>24 way it could conceivably block that light from providing</p> <p>25 light on the side of the house where the entrance is. So</p>
<p>10</p> <p>1 HEARING EXAMINER ROBESON: Oh.</p> <p>2 MS. KINNA: -- as opposed to two full floors. We're</p> <p>3 only talking a few stairs down.</p> <p>4 HEARING EXAMINER ROBESON: Oh. Okay.</p> <p>5 MS. KINNA: So it's just a little bit. Not everything</p> <p>6 is on exactly the same level. But the accessory apartment,</p> <p>7 the gross square footage came in at 1124 square feet. And</p> <p>8 entrance is on the left side.</p> <p>9 HEARING EXAMINER ROBESON: Wait. Your floor plan says</p> <p>10 1426 square feet minus 283 square feet which equals 1143</p> <p>11 square feet.</p> <p>12 MS. KINNA: Mine's gross square footage though. That</p> <p>13 includes exterior walls.</p> <p>14 HEARING EXAMINER ROBESON: Oh. Okay. So what is the</p> <p>15 -- what is your measurement of the --</p> <p>16 MS. KINNA: The total gross square footage --</p> <p>17 HEARING EXAMINER ROBESON: Yeah.</p> <p>18 MS. KINNA: -- is 1124 square feet.</p> <p>19 HEARING EXAMINER ROBESON: Okay.</p> <p>20 MR. NEWELL: Might I comment?</p> <p>21 HEARING EXAMINER ROBESON: Sure.</p> <p>22 MR. NEWELL: The square footage that was on that</p> <p>23 diagram were from my numbers, which I was estimating. They</p> <p>24 weren't --</p> <p>25 HEARING EXAMINER ROBESON: Oh.</p>	<p>12</p> <p>1 that's why I put in my report to provide lighting, adequate</p> <p>2 lighting that lights up from the driveway down the stairs to</p> <p>3 the entrance.</p> <p>4 HEARING EXAMINER ROBESON: Okay.</p> <p>5 MS. KINNA: That's the only stipulation I could see</p> <p>6 that would need to be addressed.</p> <p>7 HEARING EXAMINER ROBESON: This is one of the fewest --</p> <p>8 the shortest lists of required things to do that I've ever</p> <p>9 seen. So you must take good care of your home. Do you</p> <p>10 agree to add the lighting required by the Department of</p> <p>11 Housing and Community Development?</p> <p>12 MR. NEWELL: Yes, I do.</p> <p>13 HEARING EXAMINER ROBESON: Okay. Anything else you</p> <p>14 want to say, Ms. Kinna?</p> <p>15 MS. KINNA: No, that's it.</p> <p>16 HEARING EXAMINER ROBESON: Mr. Newell, what's your</p> <p>17 observation on the availability of on-street parking?</p> <p>18 MR. NEWELL: I think there's --</p> <p>19 HEARING EXAMINER ROBESON: Is it generally -- the</p> <p>20 standard is can residents park within 300 feet -- do they</p> <p>21 have -- are they able to park on the street if they need to?</p> <p>22 MR. NEWELL: Yes. There's typically two spots</p> <p>23 available right, immediately in front of the house.</p> <p>24 HEARING EXAMINER ROBESON: Okay. And how about the</p> <p>25 rest of the street?</p>

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4 (13 to 16)

<p>13</p> <p>1 MR. NEWELL: I would say the rest of the street has 2 some cars parked on the street but there's parking 3 available. 4 HEARING EXAMINER ROBESON: Okay. And will this 5 property have the same street addresses the main dwelling? 6 MR. NEWELL: Yes. 7 HEARING EXAMINER ROBESON: Okay. Do you have anything 8 else you'd like to say about the application? 9 MR. NEWELL: No. Nothing else to add. 10 HEARING EXAMINER ROBESON: No, nothing? But after all 11 your long wait I thought you'd be building up things to say. 12 MR. NEWELL: Oh. 13 HEARING EXAMINER ROBESON: Okay. Except, you know, bad 14 things. But I do apologize for that. Okay. So what I'm 15 going to do is adjourn the hearing and what you can do is 16 take that affidavit up to -- they're playing musical chairs. 17 I think you have to go to the fourth floor, talk to the 18 receptionist there, and tell them you need to notarize -- 19 don't sign it until you're in front of the notary. And tell 20 them that there's a notary in Mr. Leventhal's office and I 21 can't remember -- you can talk to Sara on the way out and 22 she'll tell you which offices. When you finish that you can 23 bring it back down here and just submit it to Sara and it 24 will go in the record. All right? What I have to do is 25 wait 10 days to receive the transcript. Once I get the</p>	<p>15</p> <p>1 (Off the record at 11:46 a.m.) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>14</p> <p>1 transcript I'll be able to issue a decision. I do have 30 2 days to issue the decision from the day the record closes, 3 but I highly doubt that that will be necessary. The record 4 -- the 10 days ends on February 15th. Now, if for some 5 reason you can't get the affidavit signed today you're 6 welcome to take it back to, you know, to a bank or something 7 and have it notarized as long as you get it back by the 15th 8 there won't be a delay. All right? 9 MR. NEWELL: Yes. 10 HEARING EXAMINER ROBESON: So if you disagree for some 11 reason with my decision you have 10 days to request oral 12 argument in front of the Board. The oral argument is on the 13 record of this case, which means they don't take any new 14 testimony. They don't take new Exhibits so everything that 15 you want to say, you know, has to be said here. All right. 16 So is there anything else before I adjourn? 17 MR. NEWELL: No, nothing else. 18 MS. KINNA: Nothing from me. 19 HEARING EXAMINER ROBESON: I see none. I'm going to 20 adjourn the hearing. Thank you for waiting. And you should 21 get your decision shortly. 22 MR. NEWELL: Thank you. 23 HEARING EXAMINER ROBESON: All right. Thank you. 24 MS. KINNA: Thank you. 25 HEARING EXAMINER ROBESON: Thank you Ms. Kinna.</p>	<p>16</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, MOLLY BUGHER, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording and supporting 6 information; and that I am neither counsel for, related to, 7 nor employed by any of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 Molly Bugher 12 DATE: February 14, 2018 13 14 15 16 17 18 19 20 21 22 23 24 25</p>