

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY, MARYLAND

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[www.montgomerycountymd.gov/content/council/zah/index.asp](http://www.montgomerycountymd.gov/content/council/zah/index.asp)

IN THE MATTER OF THE OBJECTION TO  
ACCESSORY APARTMENT LICENSE  
NO. 121370

Shelley Deppa

License Applicant

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Maria Bender

Objector

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\* OZAH Case No. ADO 21-02  
\* DHCA Pending License No. 121370  
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Before: Derek J. Baumgardner, Hearing Examiner

**REPORT AND DECISION**

**I. CASE SUMMARY**

On April 22, 2021, Objector, Maria Bender, filed an Objection to DHCA Decision Regarding Accessory Dwelling Unit for License No. 121370. Exhibit 1. Ms. Bender included an attachment to her Objection detailing the substance of her objection. Exhibit 2.

On May 7, 2021, License Applicant, Shelley Deppa, responded to the Objection by filing a response to the objection. Exhibit 7(a).

OZAH scheduled a public hearing for May 11, 2021, which proceeded as scheduled. Ms. Bender and Ms. Deppa, the license applicant, testified at the hearing.

**II. THE OBJECTION IS BARRED AS UNTIMELY**

On December 24, 2020, the Director of the Department of Housing and Community Affairs (DHCA) issued the Director's Report with respect to Accessory Apartment Class 3 license application number 121370 approving the application under certain terms. Exhibit 4. Under Section 29-26(b)(3) of the Montgomery County Code (Code) and OZAH Rules of Procedure for Agency Referral and Accessory Apartment Cases (OZAH Rules or Rules) 3.3.2 (Time for Filing), any party wishing to object to the issuance of a license for an accessory apartment must do so "within 30 days after the Director's Report is issued." *Code*, §29-26(b)(3); Rule 3.3.2. Ms. Bender's objection was dated April 15, 2021, and received by OZAH on April 22, 2021. Under any calculation, Ms. Bender's objection is not timely. During the hearing, however, Ms. Deppa explained that even though her original application for an accessory apartment was filed with DHCA in January 2021, there was miscommunication with DHCA about when the public posting was required to be placed on the property, and the public posting was not placed on the property until March 3, 2021. Ms. Bender testified that she remembered seeing the public posting in March 2021 but did not provide a date certain. T. 12.

As public notice was not provided until March 3, 2021, the Hearing Examiner finds good cause to extend the time for filing an objection from 30 days of the date of public posting. Nonetheless, even under this more liberal standard for the Time for Filing an objection, the objection was still dated and received more than 30 days after the conclusion of the objection period. For this reason, the objection is not considered timely filed and is therefore barred from consideration.

### **III. THE MERITS OF THE OBJECTION**

Notwithstanding the finding above that the objection is not timely filed, the Hearing Examiner will briefly address the substantive claims of the objection here.

Ms. Bender's objection states that she is President of the Brookeville Knolls Community Association, which is in the process of "passing an amendment to prohibit ADUs." Exhibit 2. The basis of her objection is (Exhibit 2):

The homeowners have expressed concern on the impact of this ADU to our community. ADUs are contrary to the housing intentions of our homeowners, particularly those of us who have significantly invested in a community of dedicated single-family homes. In addition, ADUs will strain infrastructure services that accompany the increased density of the community, i.e., utility services, emergency response time, local schools, etc. If 25% of our community were to have an ADU, this alone would add 41 vehicles to our streets. Our HOA is in the process of passing an amendment to disallow ADUs in the community. The homeowner at 18417 Shady View Lane is aware of the pending amendment. She sent a letter to the HOA to voice her opinion and voted against the amendment. In addition, the homeowners has not complied with fence requirements, even after being notified of the violation.

Exhibits 6 and 7 (including all subparts) detail the various attempts and stages of the process of the association to amend their bylaws to prohibit accessory apartments due to a concern that ADUs will limit the availability of on-street parking. Ms. Bender testified that her primary concern with the subject ADU was on-street parking, and that if all community members were to provide an ADU there would no longer be any available parking on public streets. T. 14.

Ms. Deppa responded that while she was aware of the Association's attempts to prohibit accessory apartments through the amendment of the association's bylaws, and she actively opposed those efforts, no final action has been taken at the present time that would expressly prohibit rental properties or accessory apartments in this community. Exhibit 7(a); T. 18. Ms. Deppa also testified as to alleged deficiencies in the process by which the Brookeville Knolls Community Association is attempting to prohibit ADUs. T. 18-20.

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

The standards for approval of an accessory dwelling unit are set out in both the Montgomery County Code (§§29-19, 29-26) and the Montgomery County Zoning Ordinance (§§

3.3.3.A and B). The Director's Report sets out all of the standards for approval of a license. Under Section 29-26(b)(5) of the Code, the Hearing Examiner has authority to "only decide the issues raised by the waiver or objection." Ms. Bender's objection raises only generalized concerns about the impact of permitting ADUs within the community and the overall impact on parking. The Code specifically limits the relief that the Hearing Examiner can grant—he can determine whether there is an error in the Director's findings or determine if parking is available on-street within 300 feet if the application is approved. He has no authority to reject an ADU application for the policy reasons stated in the objection.

Assuming, arguendo, that the objection intended to allege that the parking would be unavailable to residents within 300 feet of this particular ADU or that there is an error in Director's Report, the Hearing Examiner finds that there is no evidence in the record that this will be the case.

The Zoning Ordinance requires a minimum of three on-site parking spaces to support the primary dwelling unit and the accessory apartment. *Zoning Ordinance*, §§59.3.3.3.A.2.c.ii, 59.6.2.4. License applicants may seek a waiver of this if there is "adequate" on-street parking to support the proposed apartment. No such waiver has been requested under this license application.

Parking is deemed adequate if:

- (A) the available parking for residents within 300 feet of the proposed accessory apartment would permit a resident to park on-street near his or her residence on a regular basis; and*
- (B) the proposed accessory apartment is not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment.*

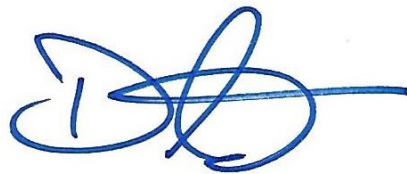
Montgomery County Code, §29-26(b)(6).

The Hearing Examiner finds that there is no evidence in the record to support a finding that on-street parking will be inadequate under §29-26(b) of the Montgomery County Code. The Hearing Examiner further finds that there is no evidence in the record to support a finding of any

error in the Director's Report nor does the Objector allege any particular error. Furthermore, the record does not contain any evidence, documents, or testimony to cause the Hearing Examiner to conclude that Accessory Dwelling Units are prohibited by private action (e.g. HOA) or public law at the subject property. If efforts by a homeowner's association to prohibit ADUs in this community are underway, as indicated, there is nothing in this record to conclude that those efforts have culminated in a binding and legally enforceable prohibition at the present time.

### **ORDER**

For the foregoing reasons, the Hearing Examiner hereby orders, on this 15<sup>th</sup> day of June, 2021, that the objection to the accessory dwelling unit located at 18417 Shady View Lane, Brookeville, Maryland (License No. 121370) is **DENIED**.



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Derek J. Baumgardner  
Hearing Examiner

#### **COPIES TO:**

Maria Bender  
Shelley Deppa  
Clifton Bouma, DHCA

### **NOTICE OF RIGHT TO APPEAL**

Any party aggrieved by the Hearing Examiner's decision on a waiver may request the Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Procedure. The Civil Division of the Montgomery County Circuit Court is located at: North Tower, 1st Floor, Rm 1200, 50 Maryland Avenue, Rockville, MD 20850. The phone number is (240) 777-9401. Anyone wishing to file an appeal should check with the Court on operations during the COVID-19 emergency at:

<https://www.montgomerycountymd.gov/cct/departments/civil-department.html>.