

liOFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND

Council Office Building
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www.montgomerycountymd.gov/content/council/zah/index.asp

IN THE MATTER OF A PARKING WAIVER
REQUEST FOR ACCESSORY APARTMENT
LICENSE NO. 121406

NINA HAGAN

License Applicant

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* OZAH Case No. ADW 21-01
* DHCA Pending License No. 121406
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CLIFTON BOUMA
LANDTHESA COLVIN

Representing the Department of
Housing & Community Affairs
(DHCA)

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Before: Derek J. Baumgardner, Hearing Examiner

REPORT AND DECISION

I. CASE SUMMARY

This matter was referred to the Office of Zoning and Administrative Hearings (OZAH) by the Montgomery County Department of Housing and Community Affairs (DHCA) after finding that the subject property located at **923 Malta Lane, Silver Spring, Maryland**, did not have the number of on-site parking spaces required by the Montgomery County Zoning Ordinance to support the request for an accessory dwelling unit under Pending License No. 121406. *See, Montgomery County Zoning Ordinance, §59.3.3.3.A.2.c.ii.*

On November 12, 2020, DHCA issued its director's report of findings ("Director's Report"). Exhibit 2. The Director's Report concluded that the proposed Accessory Dwelling Unit

(ADU) met all zoning and County Code requirements for an accessory apartment except for the required number of on-site parking spaces. *Id.* The report indicated that the existing driveway totaled 290 sq. ft., whereas 320 sq. ft. is required to accommodate on-site parking under §59.3.3.3.A.2.c.ii. *Id.*

On June 4, 2021, License Applicant, Nina Hagan, filed a Request for Waiver of Accessory Dwelling Unit On-Site Parking Requirement for License No. 121406. Exhibit 1. OZAH Rule 3.3.2 requires waiver applications to be filed within thirty (30) days from the date of the Director's Report. Pursuant to the Applicant's testimony, the Hearing Examiner finds good cause to waive this requirement for the subject application. *See* T. 13-15.

On June 11, 2021, OZAH issued notice of a public hearing on the waiver request, scheduling the hearing for June 28, 2021. Exhibit 4. The public hearing proceeded as scheduled on June 28, 2021. Ms. Hagan was present and testified. Also present were Clifton Bouma and Housing Inspector Landthesa Colvin representing the Department of Housing & Community Affairs (DHCA). No one appeared in opposition to the request.

The Applicant's waiver application states that there is an abundance of parking on the street frontage of 923 Malta Lane "of at least 4 spaces." Exhibit 1. The application further explains that 923 Malta Lane is located adjacent to the neighboring property which sits at the corner of Malta Lane and Playford Lane thereby fronting on Playford Lane and creating additional parking spaces on Malta Lane. *Id.* Lastly, the application states that there is abundant parking across the street from 923 Malta Lane of "at least 3-4 spaces." *Id.*

The Applicant submitted a driveway rendering for 923 Malta Lane showing the driveway to total 350 sq. ft. in area, which would be 30 sq. ft. above the required 320 sq. ft. necessary to support the requested ADU. Exhibit 3. The Applicant testified that the calculation included the

driveway apron, however, which is not included in the total calculation for on-site parking spaces under §59.3.3.3.A.2.c.ii, necessitating this waiver hearing. T. 13.

II. Findings and Conclusions

The standards for approval of an accessory apartment 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. As the Director's Report verifies that all other requirements for an accessory apartment have been met, the only issue before the Hearing Examiner is whether on-street parking is adequate to serve the proposed apartment.

The Zoning Ordinance requires a minimum of three parking spaces on the property 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. Parking is 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.*

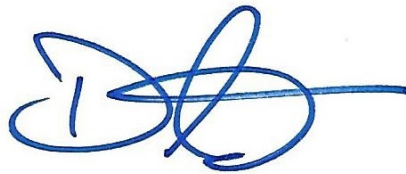
Montgomery County Code, §29-26(b)(6).

The Hearing Examiner finds from the exhibits filed and the testimony of Ms. Hagan, Mr. Bouma, and Inspector Colvin that there is sufficient on-street parking available for residents within 300 feet of the proposed apartment. The majority of homes in this residential neighborhood have driveways which provide at least one (1) off-street parking space in a driveway and there is no indication that public street parking is limited in the surrounding neighborhood. The Hearing Examiner also finds that the proposed ADU is not likely to reduce the available on-street parking

within 300 of the property for the same reasons as stated above. Thus, the evidence in this record supports a finding that on-street parking will be adequate under §29-26(b) of the Montgomery County Code.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 13th day of July, 2021, that the Applicant's request for a waiver of the number of spaces required for the accessory apartment located at 923 Malta Lane, Silver Spring, Maryland (License No. 121406) be **APPROVED**.



Derek J. Baumgardner
Hearing Examiner

COPIES TO:

Nina Hagan
Ivan Eloisa, DHCA
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>.