

OFFICE 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 AN OBJECTION TO	*	
ACCESSORY DWELLING UNIT LICENSE	*	
NO. 145926	*	
5205 Albermarle Street,	*	
Bethesda, MD 20816	*	OZAH Case No. ADO 23-02
	*	
Alexander Moen	*	
License Applicant	*	
	*	

* * * * *

Before: Lynn Robeson Hannan, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On November 10, 2022, the Director of the Department of Housing and Community Affairs (DHCA) issued his Report of Findings (Director's Findings) on an application for a Class 3 Accessory Dwelling Unit located at 5205 Albemarle Street, Bethesda, Maryland (License Application No. 145926). Exhibit 2. The Director found that the proposed unit complied with all requirements under the Montgomery County Code and Zoning Ordinance. *See, Montgomery County Code*, §29-19, *Montgomery County Zoning Ordinance*, §59.3.3.3.

On December 21, 2022, the Office of Zoning and Administrative Hearings (OZAH) received an objection to the Director's Findings from Mr. Scott J. Pinover. Exhibit 1. He objected to the because (*Id.*):

...5205 Albemarle St. has filed for a zoning variance (Application #145925) to allow conversion of a single family home into a two unit apartment building. My neighbors and I oppose this application and ask that the County please decline the request. My wife and I purchased our home in Westmoreland Hills due to its established bucolic single family nature that has been the case for over 80 years. Multifamily property opportunities are available in other nearby areas closer to metro stops and major bus lines, including Friendship Heights and the new Westbard project. Granting approval to the requested variance is simply going to provide the owner with personal monetary benefit at the expense of surrounding homeowners like myself. In addition, 5205 Albemarle is located on one of the main arteries of Westmoreland Hills and the additional parking requirements and congestion will have a further negative impact on our neighborhood. In closing, Westmoreland Hills is a single family neighborhood and there are multifamily investment opportunities in other designated nearby neighborhoods and we ask that the County decline this request.

On December 21, 2022, the Hearing Examiner emailed the license applicant and Mr. Pinover advising that the hearing on the objection was tentatively set for January 17, 2022.¹ She also provided a link to the County law governing objections to accessory dwelling units. Exhibit 5.

¹ The Montgomery County Code requires OZAH to hold a public hearing on an objection within 30 days of receiving it. *Montgomery County Code*, §29-26(b)(2)(4).

No party disputed the proposed date, and OZAH issued written notice of the hearing on January 4, 2023. Exhibit 4.

The January 17th hearing proceeded as scheduled. In conformance with the written notice, the hearing convened at 9:30 a.m. Mr. Pinover did not appear. The Hearing Examiner called a recess for 20 minutes to give him an opportunity to appear. During the recess, Staff of OZAH attempted to call Mr. Pinover, but no one answered the call. T. 7-8.

The Hearing Examiner resumed the hearing at 9:50 a.m. Mr. Moen, the license applicant, testified that the findings of the Director's Report were correct. T. 8. Also present at the hearing was Mr. Marc Guillen, Inspector III of the Department of Housing and Community Development (DHCA). DHCA is the County agency responsible for licensing and inspecting accessory dwelling units. Mr. Guillen did not testify. The Hearing Examiner adjourned the hearing but kept the record open for 10 days to receive the transcript, making clear that no other evidence could be submitted during that time. T. 9-10. The hearing adjourned at 9:56 a.m.

Based on the evidence presented, the Hearing Examiner finds that the objection should be *denied* because there is no evidence that the findings in the Director's Report are incorrect.²

II. GOVERNING LAW

Section 29-26(b)(2) of the Code governs the Hearing Examiner's authority to entertain objections to accessory dwelling unit licenses. Her review is limited to whether the findings in the Director's Report are accurate or whether the accessory dwelling unit will make on-street parking inadequate for properties within 300 feet of the premises. *Montgomery County Code*, §29-

² In addition, the Code requires an objection to be filed within 30 days of the date the Director's Findings are issued. *Montgomery County Code*, §29-26(b)(3). The Director's findings were issued on November 10, 2022, and the objection was filed on December 21, 2022, more than 30 days after the Director's findings were issued. Exhibits 1, 3.

26(b)(2)(A) and (B). The findings the Director must make are set out in §29-19(b) of the Code and include compliance with the Zoning Ordinance.

The Hearing Examiner's review is further limited by Section 29-26(b)(5) of the Code, which provides: "The Hearing Examiner may only decide the issues raised by the waiver or objection."

III. OPINION AND ANALYSIS

The Hearing Examiner's review authority does not encompass Mr. Pinover's objection. Mr. Pinover does not object to the findings of the Director's Report. He briefly mentions parking, but only peripherally as a potential side effect of accessory dwelling units in the area. He did not appear to present any testimony, nor did he submit evidence demonstrating that parking would be inadequate within 300 feet of the proposed accessory dwelling unit.

Mr. Alexander Moen, the license applicant, appeared and testified that the Director's findings were accurate. He also testified that his driveway could accommodate more than 2 cars on the property, meeting the minimum requirements in the Zoning Ordinance. *Zoning Ordinance*, §59.6.2.4. His testimony is supported by the findings in the Director's Report.³

A review of Mr. Pinover's objection demonstrates that it does not raise any issue with the findings of the Director's Report. It references parking, but there is no evidence that on-street parking is inadequate. The only evidence and testimony in the record is the Director's Report and Mr. Moen's testimony that the Director's findings are correct. Without more, the Hearing Examiner must deny the objection.

³ The Director's Report calculates the square footage of the driveway and divides that by 160 feet (the amount need to accommodate a car). The Director's Report lists the driveway square footage as 644 square feet. Applying the standard formula, Mr. Moen's driveway has room for 4 cars ($644/160=4.025$). The minimum requirement for on-site parking is 3 spaces. *Montgomery County Zoning Ordinance*, §59.6.2.4.

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is this 27th day of January, 2023, ORDERED, that the objection filed to the issuance of a Accessory Dwelling Unit License Application No. 145926, located at 5205 Albemarle Street, Bethesda, MD, is hereby *denied*, and it further

ORDERED, that the Department of Housing and Community Affairs issue the license consistent with this decision.



Lynn Robeson Hannan
Hearing Examiner

COPIES TO:

Mr. Alexander Moen
Mr. Scott J. Pinover
Tamala Robinson, Manager, DHCA
Cliff Royalty, Esq., Office of the County Attorney

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by the Hearing Examiner's decision on an objection may request the Montgomery County Circuit Court to review the Hearing Examiner's final decision under the Maryland Rules of Procedure. An appeal to the Circuit Court does not automatically stay the Director's authority to grant a license. Contact information for the Circuit Court is:

Clerk of the Court, Civil Division
North Tower, 1st Floor, Rm 1200
Rockville, MD 20850

HOURS: Monday-Friday, 8:30am - 4:30pm

PHONE: [240-777-9401](tel:240-777-9401)

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