

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND

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IN THE MATTER OF THE OBJECTION TO
ACCESSORY APARTMENT LICENSE NO. 148369

Ali Movahed

License Applicant

* * * * *

Amy Grutzner

Objector

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Before: Kathleen Byrne, Hearing Examiner

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OZAH Case No. ADO 23-05
DHCA Pending License No. 148369

HEARING EXAMINER'S REPORT AND DECISION

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I. CASE SUMMARY

This case stems from an objection filed pursuant to a decision issued by the Department of Housing and Community Affairs (“DHCA”) regarding an Accessory Dwelling Unit (“ADU”). On January 26, 2023, the Applicant applied for an attached ADU in his home at **6004 Manor Oak Way, Bethesda Maryland 20814** (Property). In response to this application DHCA assigned the pending application the number 148369. DHCA conducted a

preliminary inspection on March 2, 2023. On that same date, Inspector Austin McNamara issued a preliminary inspection report finding adequate onsite parking. Exhibit 2. On April 7, 2023, Objector, emailed an Objection to DHCA’s Decision Regarding Accessory Dwelling Unit for License No. 148369.¹ Exhibit 1. Ms. Grutzner identified the basis for her objection as “None. No parking is available” referring to street parking in the neighborhood. *Id.*

OZAH scheduled a public hearing for Monday, May 15, 2023. The public hearing proceeded as scheduled. The Applicant, Mr. Ali Movahed, testified in support of his application. Ms. Amy Grutzner, the Objector, testified in opposition to DHCA’s findings. Mr. Austin McNamara, Housing Code Inspector II, testified to the Preliminary Inspection Report, site visit and his findings.

II. GOVERNING LAW

Chapter 29, Section 19 of the Montgomery County Code details the licensing procedures for accessory dwelling units. The use standards for ADUs are found in Section 59.3.3.3 of the Zoning Ordinance. In addition to satisfying the licensing procedures, ADUs created after May 20, 2013 only one accessory dwelling unit with the same address as the principal dwelling is permitted per lot and if the unit is not within one mile of a Metrorail, Purple Line or MARC Station there must be **one onsite** parking space provided in addition to any onsite spaces required for the principal dwelling. *Montgomery County Zoning Ordinance*, §59.3.3.3.A (**emphasis added**). For a single-family dwelling in a residential zone, two parking spaces are required for the principal occupants.² *Montgomery County Zoning Ordinance* §59.6.2.4.B. One vehicle may be parked for every 160 square feet of surfaced

¹ OZAH marked the objection as received on April 11, 2023. From the record, it is unclear if the Objector attempted to file the objection on April 3, 2023. The Hearing Examiner accepted the objection as timely filed.

² The subject property is zoned R-200. See <https://mcatlas.org/viewer/>

parking area. *Id.* at §59.6.2.5.M.5.

In the event onsite parking is not provided, the Hearing Examiner may waive the onsite parking standard if on street parking for residents is available with 300 feet of the proposed ADU and the proposed ADU is not likely to reduce the availability of on street parking within that 300 foot area of the proposed ADU. *Montgomery County Code*, §29-26(b)(6).

Montgomery County Code Chapter 29, Article III, Section 26, Subsection (b)(2) sets forth the rules for objecting to any new ADU license, including the right of any aggrieved person to object to either any finding of fact by the (DHCA) Director or by “alleging that on-street parking is inadequate.” *Montgomery County Code*, §29.26.b.2. Pursuant to Subsection (b)(5), “The Hearing Examiner may only decide the issues raised by the waiver or objection,” and, pursuant to Subsection (b)(6):

The Hearing Examiner may waive on-site parking standards if:

(A) the available on-street parking for residents within 300 feet of the proposed accessory dwelling unit would permit a resident to park on- street near his or her residence on a regular basis; and

(B) the proposed accessory dwelling unit is not likely to reduce the available on-street parking within 300 feet of the proposed accessory apartment. *Montgomery County Code*, §29.26.b.5 and §29.26.b.6.

III. SUMMARY OF EVIDENCE AND TESTIMONY

Ms. Grutzner described her community as small consisting of only 12 homes and Manor Oak Way as a “very short, small street” that intersects on the west side of Old Georgetown Road. T. 10. Ms. Grutzner referred to two photographs emailed to OZAH depicting the front of the Applicant’s home and stated there is not sufficient on-street parking for any car on the street adjacent to the Applicant’s dwelling. *Id.* and Exhibit 2. Further Ms. Grutzner stated that both she and her husband object to the Application due to the lack of street parking because any visitors to the homes in the cul-de-sac park in front of her home

which is right off of Old Georgetown Road. T. 11. Ms. Grutzner read a letter into the record from a neighbor, Enrique Daza, who also objected to the Application. Mr. Daza's letter stated he strongly opposed the ADU the neighborhood cannot accommodate any additional cars, subletting will interfere with the neighborhood's existing quality of life, and that the street parking will narrow access to individual homes. T. 12-13. Ms. Grutzner alleged the apartment had been used illegally without a license and such use is in contradiction to the community bylaws. T. 20.³

Mr. Movahed testified that he has one of the longest driveways with the greatest square footage in the neighborhood. T. 15. In addition, he testified that his home also has a 2-car garage. T. 16. He parks an exotic car in the garage and his wife parks in the other garage space and his commuter car is parked in the driveway. *Id.* He believes even with the three cars currently parked at his house; the driveway can accommodate 6 more cars. *Id.* Mr. Movahed denied ever renting his property, but stated his sister lived in the basement for 3 years when she was separated from her husband. T. 25.

In the Preliminary Inspection Report, DHCA established that the site met the code requirements for size and adequate parking, but also identified several other requirements that must be met before an ADU license could be issued. Exhibit 2. Inspector McNamara scheduled a re-inspection on April 10, 2023 to review compliance with those other identified requirements. *Id.* Inspector McNamara testified that all other requirements were satisfied, and that the pending objection was the only thing preventing the license from being issued. T. 19. During his site inspection, Inspector McNamara observed that the onsite parking was well in

³ The Hearing Examiner informed both the Applicant and the Objector that OZAH has no jurisdiction to resolve any community association bylaw disputes. T. 21-22.

excess of the legal requirements for an ADU. *Id.* Inspector McNamara agreed with the Objector’s description of the cul-de-sac regarding no readily available street parking. *Id.*

IV. FINDINGS OF FACT AND ANALYSIS

As set forth in the Governing Law section, an aggrieved person may object to the licensing of an ADU based on either an “object[ion] to a finding of fact by the DHCA Director” or by “alleging that on-street parking is inadequate.” *Montgomery County Code*, §29.26.b.2. Ms. Grutzner objected on the basis that “there is not sufficient room for any on street parking.” T. 10. Ms. Grutzner did not specifically raise any objection to the findings of fact set forth in the Final Director’s Report of Findings on Accessory Apartment Class 3 License Application. Exhibit 1,

The requirements for on-site parking are two spaces for the primary residence, *Montgomery County Zoning Ordinance*, §59.6.2.4.B, which is the equivalent of 320 square feet of driveway footage, *see id.* at §59.6.2.5.M.5. The construction of an ADU requires one additional on-site space, *id.* at §59.3.3.3.A, or 480 square feet of driveway footage total for the Property, *see id.* at §59.6.2.5.M.5. The Property has a 2-car garage and driveway footage of 1,380 square feet, which exceeds the requirement by 900 square feet enough for 5 additional cars. Exhibit 3. Mr. Movahed did not request, nor he need, a waiver of parking requirements. *Id.*

Mr. Movahed testified he currently parks 3 cars on the Property, two in the garage spaces and one in the driveway. T. 16. Based on the calculations above that leaves the possibility of 7 additional open parking spaces in the driveway of the Property. Ms. Grutzner testified that visitors to Mr. Movahed’s property parked on the street. T. 22-24. However, Ms. Grutzner could provide no proof that this occurred. The Hearing Examiner finds that even if Ms. Grutzner could produce proof that Mr. Movahed or any other neighbor’s guest parked on the street on any

given day, this fact does not prove that a tenant living in the proposed ADU would not have adequate onsite parking. The Objector has failed to establish that on-street parking is required for the ADU license to be issued. Because the onsite parking is more than sufficient, the issue of whether adequate on-street parking exists is irrelevant to the licensing of this ADU.

If Mr. Movahed applied for a parking waiver, the standard the Hearing Examiner would apply is whether “the available on-street parking for residents within 300 feet of the proposed accessory dwelling unit would permit a resident to park on-street near his or her residence on a regular basis.” *Montgomery County Code*, §29.26.b.6. Because no waiver is sought and onsite parking is more than adequate, the Hearing Examiner need not conduct the exercise of applying this standard to the current on-street parking situation.

V. CONCLUSION AND ORDER

The standards for approval of an accessory dwelling unit are set out in both the Montgomery County Code at §§29-19, 29-26 and the Montgomery County Zoning Ordinance at §59.3.3.3.A and B. The Preliminary Inspection Report lists all the standards for approval of an ADU license. An aggrieved person may file an objection and request for a hearing with OZAH by either objecting to any finding of fact by the Director or alleging that on-street parking is inadequate. *Montgomery County Code* 29-26(2). The Hearing Examiner has authority to “only decide the issues raised by the waiver or objection.” *Id.* at 29-26(5).

Ms. Grutzner objected to the adequacy of parking, specifically on-street parking. The Zoning Ordinance requires a minimum of three onsite parking spaces to support the primary dwelling unit and the accessory apartment. *Zoning Ordinance*, §§59.3.3.3.A.2.c.ii and 59.6.2.4. The undisputed testimony before the Hearing Examiner by Inspector McNamara before was that 1,380 square feet existed onsite for parking and only 480 square feet was needed to meet the onsite parking requirement. No evidence in the record contradicts

Inspector McNamara’s testimony and no evidence in the record suggests the onsite parking to be inadequate.

Applicant’s may seek a waiver of the onsite parking requirement of this if there is “adequate” on-street parking to support the proposed apartment. *Montgomery County Code* 29-26(5). The Applicant did not request an on-street parking waiver, and none has been granted. Code Sections 29-26(2) and 59.3.3.3.A.c.ii must be read together. The Hearing Examiner made no finding permitting **on-street** parking or regarding its adequacy. Because no waiver request for on street parking has been made, no on street parking associated with this ADU application has been granted. The Hearing Examiner does find onsite parking to be adequate.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 26th day of May, 2023, that the **OBJECTION** to the accessory dwelling unit located at 6004 Manor Oak Way, Bethesda MD 20814 (License No. 148369) is **DENIED**.



Kathleen Byrne
Hearing Examiner

COPIES TO:

Ali Movahed
Amy Grutzner
Austin McNamara, 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>.