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Before: Lynn Robeson Hannan, Hearing Examiner

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* OZAH Case No. ADW 24-01
* DHCA Pending License No. 152881

The Applicant for the above accessory dwelling unit (ADU) license seeks a waiver from the number of on-site parking spaces required for the proposed ADU located at 23 Eastmoor Drive, Silver Spring MD 20901. Exhibit 1. Austin McNamara, Department of Housing and Community Affairs (DHCA) Code Inspector III, filed an inspection report on December 5, 2023. Exhibit 2. Mrs. Carbonell filed a request to waive the minimum number of on-site parking spaces required for accessory dwelling units (ADU) on December 8, 2023. Exhibit 1. OZAH issued a notice of a public hearing on Ms. Carbonnell's parking waiver request on December 12, 2023, scheduling a hearing for January 4, 2024. Exhibit 3.

The public hearing proceeded as scheduled. Both Ms. Carbonnell and Mr. McNamara testified. The Hearing Examiner left the record open for 10 days to receive the transcript. The transcript was received on January 16, 2024 and the record closed on that date.

II. Factual Background

Ms. Carbonnell acknowledges that her property does not have the required amount of on-site parking for an ADU because it has no driveway. Ms. Carbonnell testified that there is “plenty” of parking available on her block. Hers is the only home that doesn’t have a driveway. All the space in front of her house is empty and there is on-street parking across the street. Both of her neighbors have driveways, which are approximately 80 feet apart. T.6-7.

Ms. Carbonnell estimated that four cars can park in front of her property and there are on-street space across the street that can be used for parking as well. Parking on the street is not restricted by permit. T. 7-8.

Mr. McNamara testified that he is the Housing Code Inspector assigned to inspect the property subject to this license application. He visited the property two times during inspections. He confirmed that the property does not have a driveway but there is ample on-street parking. He confirmed that on-street parking is not restricted by permits. He did not have any issue parking directly in front of the property and did not notice congested parking in the surrounding area. He observed that there would be plenty of parking for “quite a number of vehicles.” T. 8- 9.

C. 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, §59-6.2.4). The Ordinance requires a minimum of three (3) on-site spaces for accessory dwelling units, 2 for the principle dwelling unit and one for the ADU. *Zoning Ordinance, 59.6.2.4.*

59.6.2.4. DHCA interprets the 3-space requirement as having a minimum of 480 square feet available for parking. Exhibit 2.

License applicants may seek a waiver of this if there is “adequate” on-street parking for residents of the ADU and nearby neighbors. The County Code deems parking to be 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).

Neither party disputes the fact that there is not enough onsite parking for the ADU because Ms. Carbonnell’s property has no driveway. Testimony at the hearing demonstrates that there are more than the required spaces on the street abutting Ms. Carbonnell’s property and more across the street from her property. This is reinforced by the fact that all other homes on the street have driveways and Mr. McNamara’s testimony that there was plenty of parking when he visited to inspect the property.

Based on the evidence in this record, the Hearing Examiner finds that residents within 300 feet of the proposed ADU will not impact the ability of neighbors within 300 feet of the proposed ADU to park on the street if necessary. Because all other homes have driveways, the Hearing Examiner also finds that the proposed ADU will not impact the available on-street parking within 300 feet of the property.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 17th day of January 2024, that the Applicant’s request for a waiver of the number of parking spaces required for the

accessory apartment located at 23 Eastmoor Drive, Silver Spring, MD (Pending License No. 152881) be **APPROVED**.



Lynn Robeson Hannan
Hearing Examiner

COPIES TO:

Eileen Carbonnell
License Applicant
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. The website is: <https://www.montgomerycountymd.gov/cct/departments/civil-department.html>.