

On April 23, 2024, DHCA issued its Preliminary Inspection Report (“Report”). Exhibit 2. The Report concluded that the proposed accessory dwelling unit (ADU) did not meet the required number of on-site parking spaces. *Id.* The Report found that no on-site parking existed and found street parking only for the dwelling. *Id.* The Hearing Examiner conducted a review of local area maps and MC ATLAS and determined that the property is NOT located within one (1) mile of the Metrorail, Purple Line or MARC Rail Station.. In an R-60 Zone, two (2) spaces are required for the owner and only one vehicle may be parked for every 160 square feet of surfaced parking area. *Montgomery County Zoning Ordinance*, §59.6.2.5.M.5. The Zoning Ordinance requires one additional on-site parking space to the required on-site spaces for the owner. *Id.* at §59.3.3.3.A.2.c.ii.¹

On April 23, 2024, the License Applicant, Julia Hart, filed a timely Request for Waiver of Accessory Dwelling Unit On-Site Parking Requirement for License Application No. 153298. Exhibit 1. On June 18, 2024, OZAH issued a notice of public hearing on the waiver request, scheduling the hearing for July 9, 2024. Exhibit 4. The public hearing proceeded as scheduled remotely, via Teams, on July 9, 2024. The Applicant, Ms. Hart was present and testified. Also present was Housing Inspector Austin McNamara representing the Department of Housing & Community Affairs (DHCA). No one appeared in opposition or support to the request.

The Applicant testified in support of the requested waiver. The Applicants is the owner and primary resident of the subject property. Exhibit 1. The principal dwelling consists of 2,900 gross square feet and the ADU to be constructed as a separate detached structure will consist of approximately 700 square feet. Exhibit 2. The Application identified no driveway exists on the property. Exhibit 3. Ms. Hart testified that that Braeburn Place is a quiet street where some homes

¹ A minimum of 480 square feet of on-site parking is required for the addition of an ADU.

have driveways while others utilize street parking only. T. 11. Ms. Hart has submitted the plans to build a new detached structure that will serve as a separate dwelling unit for her existing roommate that currently lives in the main structure. T. 8. During her testimony, Ms. Hart referred to photographs she submitted of the street parking available in front of her house. Exhibit 6 and T. 9-10. In describing the photographs Ms. Hart explained that the 3 cars in depicted were owned by herself, her roommate who will occupy the soon to be constructed detached structure, and her neighbor. T. 9-10. Ms. Hart is waiting for permitting to approve her final plans before her contractor can begin construction on the detached structure. T. 12.

Housing Inspector, Austin McNamara, testified on behalf of DHCA. Inspector McNamara testified that he inspected the property and did not observe a problem with street parking. T. 11. He found plenty of parking spaces on Braeburn for the proposed detached structure *Id.*

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 only issue before the Hearing Examiner is whether on-street parking is adequate to serve the proposed apartment. The Report states the property lacks sufficient on-site parking and identifies additional standards for approval of a license. The subject property has no off-street parking for either the resident or the tenant. Exhibit 1. The Zoning Ordinance requires a minimum of three (3) 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. Hart and Inspector McNamara that the proposed ADU is not likely to reduce the available on-street parking within 300 feet of the property. In addition, the Hearing Examiner finds persuasive the undisputed testimony from Mr. Takougne that on-street parking exists for at least three (3) parking spaces directly in front of the subject property. The Hearing Examiner also finds persuasive the fact that the tenant for the soon to be constructed detached structure is the same tenant the currently occupying the main dwelling at the subject property. The tenant's transition from the current structure to the new one will result in no new vehicles parking on the street. The evidence in this record supports a finding that on-street parking will be adequate under §29-26(b) of the Montgomery County Code to support an ADU.

ORDER

For the foregoing reasons, the Hearing Examiner hereby orders, on this 24th day of July 2024, that the Applicant's request for a waiver of the number of spaces required for the accessory apartment located at **7012 Braeburn Place, Bethesda, Maryland 20817** (Pending License No. 153298) be **APPROVED**.



Kathleen E. Byrne
Hearing Examiner

COPIES TO:

Julia Hart, Applicant
Austin McNamara, 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>.