

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2599

PETITION OF PAMELA WHITNEY

OPINION OF THE BOARD

(Effective Date of Opinion: June 23, 2004)

Case No. S-2599 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment. Pursuant to the provisions of Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a written report and recommendation for final action by the Board. The Hearing Examiner convened a hearing April 19, 2004, and on May 20, 2004, issued a report and recommendation for approval of the special exception.

Decision of the Board: Special Exception **granted**, subject
to conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's report and recommendation at its Worksession on June 9, 2004. After careful consideration and review of the record, the Board adopts the report and recommendation and grants the special exception subject to the following conditions:

1. The Petitioner is bound by her testimony and exhibits of record;
2. The Petitioner must install a single-cylinder deadbolt lock on the bedroom door;
3. The Petitioner must properly support and secure the kitchen stove top to make it level;
4. The occupants of the accessory apartment may park no more than two cars on the street for their own use at any given time; and
5. The accessory apartment may be inhabited by no more than two persons.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Allison Ishihara Fultz, and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of June, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF: PAMELA WHITNEY *
Petitioner *
Pamela Whitney * Board of Appeals Case No. S-2599
(OZAH Referral No. 04-32)
For the Petition *
Barbara Foresti, Department of Housing *
and Community Affairs *
Wright A. Jolly, Jr., Housing Code Inspector *
Department of Housing and *
Community Affairs *
Sandra Youla, Zoning Analyst, Park and *
Planning Department, M-NCPPC *

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Petition No. S-2599, filed on December 12, 2003, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in a single-family residential structure located at 6609 Allegheny Avenue, Takoma Park, Maryland 20912. The subject property is designated Lot 5, Block 16 in the Pinecrest Subdivision and is zoned R-60 (Residential, one-family detached) (Tax Account No. 03174174).

By Resolution adopted January 7, 2004 and effective March 5, 2004, the Board of Appeals ("BOA") referred this matter to the Hearing Examiner to conduct a public hearing and render a written report and recommendation to the BOA. On January 22, 2004 the Board of Appeals scheduled a hearing in this matter, to be held by the hearing examiner on April 19, 2004.

Technical Staff at the Maryland-National Capital Park and Planning Commission reviewed the petition and, in a memorandum dated April 9, 2004 (Exhibit 14), recommended approval of the petition with conditions. The Department of Housing and Community Affairs ("DHCA")

inspected the property on April 6, 2004, and set forth certain requirements for the granting of the requested special exception in a memorandum of the same date (Exhibit 13).

A public hearing was convened as scheduled on April 19, 2004 at which testimony was presented in favor of the petition by the Petitioner, Sandra Youla of the MNCPPC Technical Staff and DHCA staff. No testimony was offered in opposition to the special exception and the record closed on the day of the hearing.

II. BACKGROUND

A. The Subject Property

The subject property is located at 6609 Allegheny Avenue in Takoma Park, on the northeast side of Allegheny Avenue (shown on some maps as Allegheny Street) between First and Second Avenues. It sits about two blocks east of Eastern Avenue, which is the border between Montgomery County and Washington, D.C. The property is located within the geographic area that was formerly part of Prince George's County and was annexed into Montgomery County on July 1, 1997. The subject property is a deep, narrow, rectangular lot measuring approximately 6,300 square feet, with a street frontage of 42 feet and a depth of 150 feet. Because the property is located on a steeply sloping street in a hilly neighborhood, it slopes steeply down from the northwest side yard to the southeast side yard and up from the front yard to the rear yard. Submitted photographs indicate that the property has many mature trees in the front yard, which screen much of the house from view, and a small backyard with a grassy area, bushes and trees.

The subject property is developed with a one-story stucco and frame house with a walkout basement that opens both to the front yard and to the southeast side yard. The main living unit is located in the first floor and the accessory apartment is in the walkout basement. A rear extension to the first floor of the house appears to be used as a storage room for the main living unit. The accessory apartment has two entrances, which are reached via a deck that wraps around the southeast side and part of the front of the house. A ten-foot wooden lattice-work fence screens the deck and basement from the front yard, and the rear yard is fenced. Several sets of stairways and

walkways lead from the public sidewalk to the deck and past it, along the northwest side of the house, to the main entrance, which is on the northwest side. The entrances and walkways have typical residential lighting, which Technical Staff found meets all required standards and does not spill over onto adjoining properties. The front of the house is shown in the photograph below. A house location plan showing the location of the building on site, as well as the locations of exterior lighting and landscaping, is reproduced on page 4.

Photograph of Front of House, Ex. 9(a), bottom of page

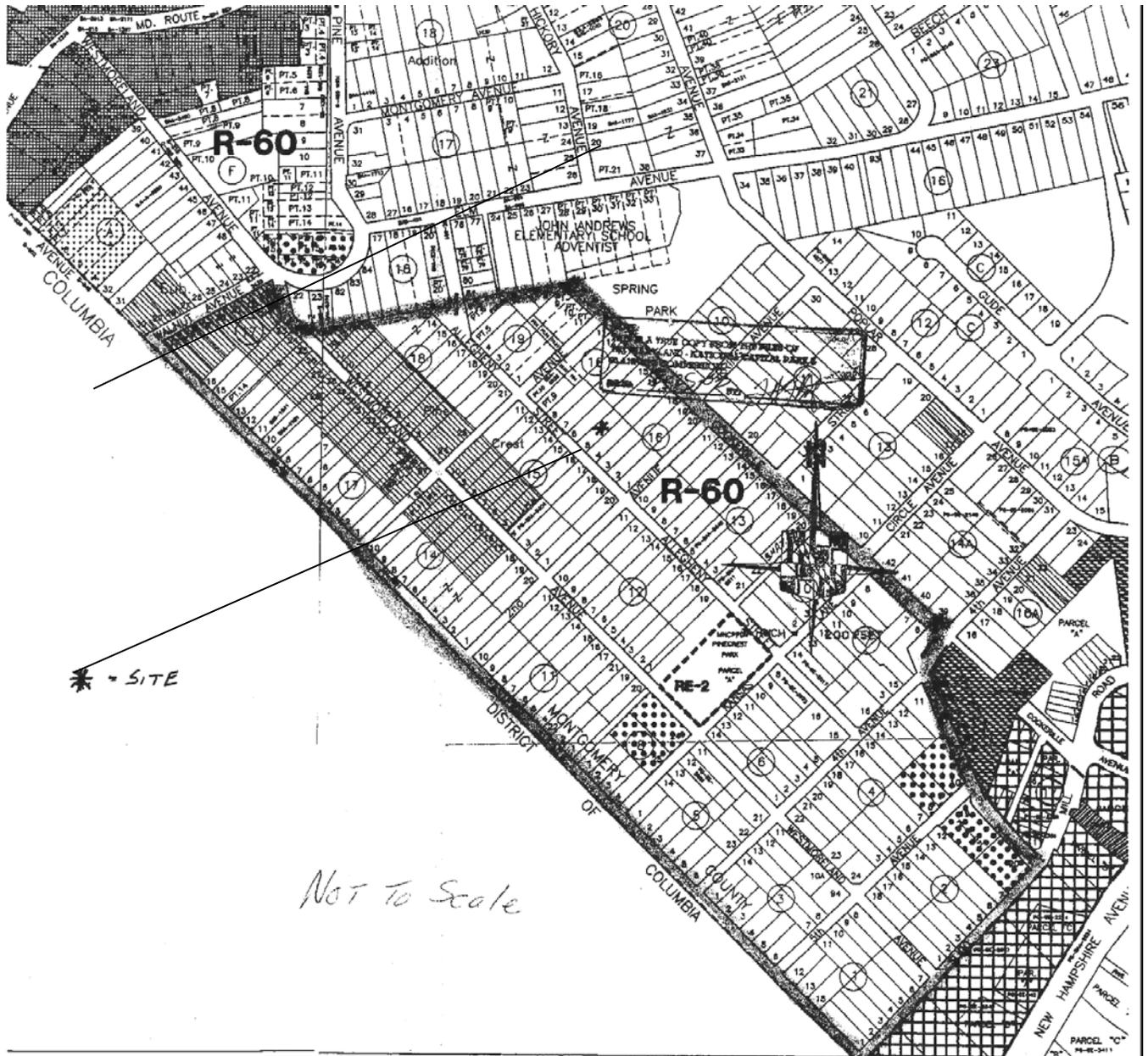


B. The Neighborhood and its Character

Technical Staff defined the general neighborhood of the subject property as the Pinecrest subdivision, bounded by Cockerille Avenue, Orchard Avenue, Sligo Mill Road, Eastern Avenue, Walnut Avenue and the subdivision's northern boundary, along the rear lot lines of properties on the south side of Elm Avenue. The Hearing Examiner accepts this designation, which appears to amply include all the properties that would be likely to be affected by the proposed special exception. The neighborhood as defined includes roughly 60 acres of land and consists primarily of single-family

detached homes in the R-60 Zone (Residential, one-family), with some garden apartments on land classified in the R-30 Zone (Multiple Family, Low Density) and single-family detached homes on land zoned R-40 (Residential, one-family). The neighborhood and its zoning classifications may be seen on the map below, excerpted from the Staff Report.

Neighborhood Zoning Map, excerpted from Staff Report, Ex. 14.



Technical Staff notes that Montgomery County records indicate there are two existing special exceptions for accessory apartments within the defined neighborhood, one on Eastern Avenue and one on Cockerille Avenue. An additional accessory apartment application, S-2574, was withdrawn on April 9, 2004. In addition, staff researched the records of Prince George's County for the general neighborhood and discovered that four applications have been filed for multi-family use of residential buildings in the neighborhood. Three of these have been granted; the status of the fourth is not known. Because of missing records, it was not possible to determine whether any of the Prince George's County special exceptions have been revoked.

C. Master Plan

The property is located within the area covered by the *Takoma Park Master Plan (December 2000)* (the "Master Plan"). The Master Plan's "Existing Land Use" map shows the subject property as a "single-family conversion," while neighboring properties are shown as "single family detached residential". The Master Plan does not address accessory apartments explicitly, but recommends continued R-60 zoning, which permits accessory apartments by special exception. In general, the Master Plan supports the residential character of Takoma Park, neighborhood reinvestment, enhancement of the quality of life, retaining the single-family detached character of the subject property and its general neighborhood, and the rights of property owners to develop existing properties and replace existing structures. Technical Staff opined that accessory apartments can help achieve these goals, as well as further the objectives of County housing policy to increase the variety of housing available and the supply of affordable housing. See Staff Report at 10.

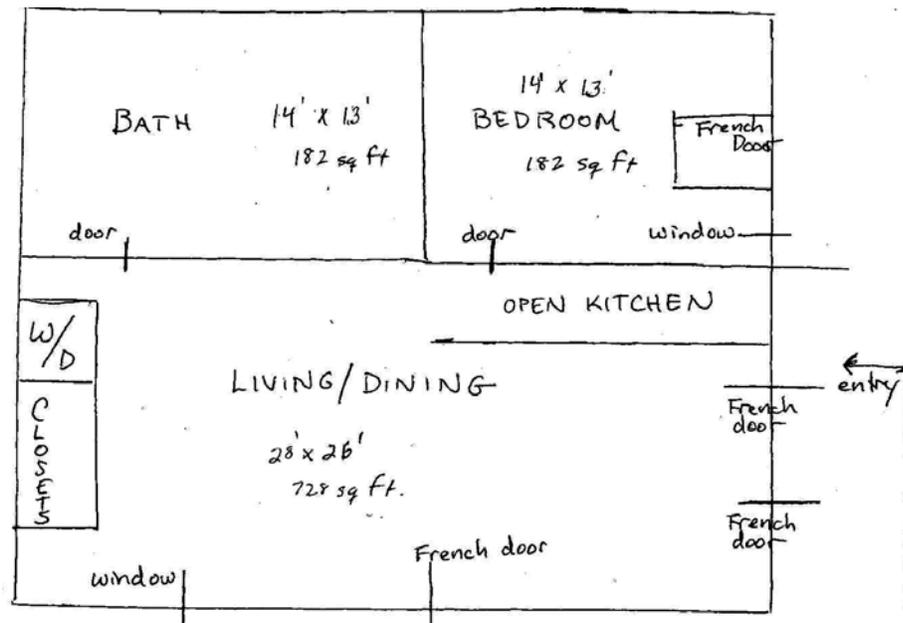
D. Existing and Proposed Use

The Petitioner is currently living in the accessory apartment while performing repairs to the apartment. Prior to beginning repairs, she lived in the main unit. Two tenants currently live in the main unit. Eventually the Petitioner plans to move into the main unit and rent the basement apartment, which consists of a bedroom, a combined kitchen and living/dining room opening onto the

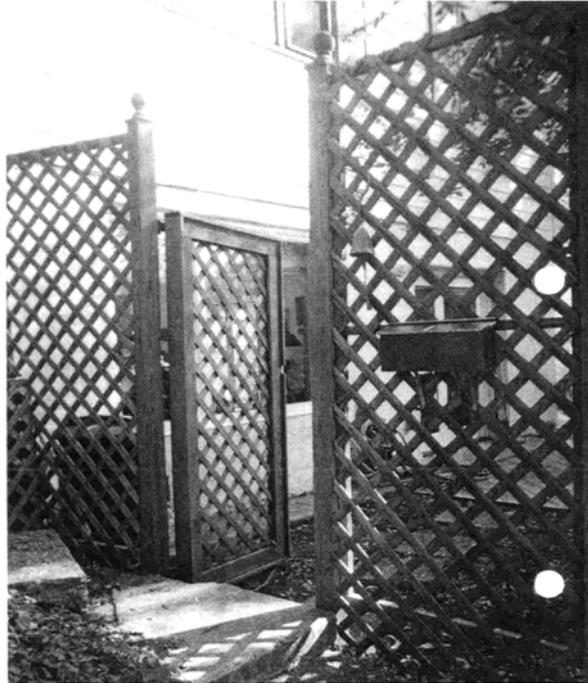
deck and a bathroom. Technical Staff notes that the proposed accessory apartment occupies almost the entire basement, which is smaller than the main floor of the house. The footprint of the accessory apartment is approximately 26 feet wide by 42 feet deep, for a total of about 1,092 square feet. Access to the apartment is provided via several French doors leading from the deck, on the side and front of the house, into the living/dining room and the bedroom. These entrances are screened from view by a ten-foot fence, preserving the single-family appearance of the house.

The subject property does not have a driveway, per se, but does have one on-site parking space that has been carved out in the southeast corner of the property. Posted parking restrictions prohibit parking along the entire side of the street where the subject property is located, but parking is permitted on the other side of the street. The Petitioner currently has two tenants in the apartment, who have one car. She agreed to a condition of approval that would allow these or any future tenants to park no more than two cars on the street for their own use at any time. This condition would not restrict visitors from parking on the street, as it is directed only to cars for the tenants' own use. With this condition, Technical Staff opined that the proposed special exception would not adversely affect parking conditions in the neighborhood.

A floor plan is reproduced below. Photographs of the accessory apartment entrances, the on-site parking space and nearby on-street parking are provided on the following pages.



Entry to Accessory Apartment Area, Ex. 9(b)



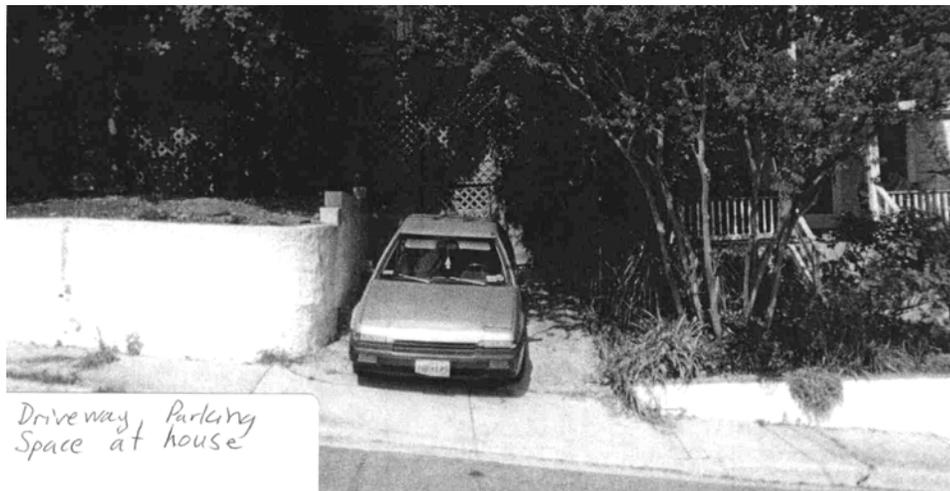
Deck along Front of House, Ex. 9(c)



Side Deck Entrances to Accessory Apartment, Ex. (9d)



On-site Parking Space, Ex. 9(e), bottom



On-Street Parking, Ex. 9(e), top



E. Annexation and Development Standards

When the Petitioner purchased the subject property in 1997, she understood that the rental apartment had existed for many years and was licensed by the City of Takoma Park. She learned that the rental unit requires a special exception from Montgomery County when she requested a housing safety inspection as part of a home study for adoption.

Under Section 59-G-4.35 of the Zoning Ordinance, following the July 1997 annexation from Prince George's County, multi-family use of a structure in a single-family zone within the annexation area may continue if the use was operated continuously, had a valid use and occupancy permit as of January 1, 2001, and was registered with the Montgomery County Department of Permitting Services ("DPS"). Special provisions in Code § 59-B-6 also allow any use within the annexation area to continue if it had a valid use and occupancy permit on June 30, 1997. Technical Staff performed laborious, detailed research in Prince George's County and concluded that no use and occupancy permit was ever issued for the apartment at the subject property, nor had the property ever received a grant of special exception for Prince George's County's version of an accessory apartment (known as "conversion of one-family detached dwelling"). Staff found no indications that the apartment use was ever legal in Prince George's County. Accordingly, Staff concluded that the apartment cannot continue as a "grandfathered" use, and therefore a special exception is required.

Pursuant to Code § 59-G-1.23(a), all special exceptions are subject to the development standards of the applicable zone where they are located. However, for properties in the Takoma Park annexation area, Code § 59-B-6.2 grants conforming status to any previously legal structure:

Any building or structure which was lawful under the Prince George's County Zoning Ordinance in effect on June 30, 1997, and was constructed . . . under a building permit issued prior to February 10, 1988, is a conforming building or structure in Montgomery County. . . .

Technical Staff interpreted this provision (correctly, in the undersigned's view) to mean that if the subject property was lawful in Prince George's County before the annexation, it can be considered to meet the development standards of the R-60 Zone for purposes of Code § 59-G-1.23. Technical Staff's extensive research revealed that assessing whether the existing house on the

subject property was legal in Prince George's County is a problematic task due to insufficient data. At the time of the annexation, Montgomery County did not collect from Prince George's County any findings about the legality of each and every building in the annexation area, or an inventory of house location plans or surveys establishing what each building looked like at that time. Moreover, Prince George's County does not issue zoning conformance letters of the type that DPS issues in Montgomery County.

In this case, Staff was able to approximate what the house looked like at the time of annexation, because the Petitioner became a part owner of the house in March, 1997, so she had a house location plan from that time period that was prepared as part of the settlement process.¹ Technical Staff was unable to obtain from Prince George's County a complete version of its zoning ordinance from 1997, due to missing records. However, having collected and analyzed the available data, Staff concluded that the existing house on the subject property satisfied the applicable standards in Prince George's County at the time of annexation, and therefore should be considered to satisfy the development standards of the applicable zone for purposes of Code § 59-G-1.23. The Hearing Examiner agrees with this conclusion.

III. SUMMARY OF TESTIMONY

Wright A. Jolly, Jr., Housing Code Inspector for DHCA, testified at the hearing that, as noted in his inspection report (Ex. 13), the existing basement apartment satisfies all standards applicable to accessory apartment with two exceptions: (1) the Petitioner must install a single-cylinder deadbolt lock on the bedroom door; and (2) the Petitioner must properly support and secure the kitchen stove top to make it level. Mr. Jolly noted that based on the square footage of the unit, the accessory apartment may be occupied by no more than two persons.

Sandra Youla of MNCPPC Technical Staff testified that this application was the first special exception application that Montgomery County has received for a property in the Takoma Park

¹ The Petitioner became sole owner in 1999. *See* Ex. 15.

annexation area. As a result, her work on this case included figuring out what provisions apply to such properties and researching applicable provisions in the Prince George's County Zoning Ordinance, with which Staff is not familiar. She also confirmed the conclusions and recommendations in the Staff Report.

The Petitioner, Pamela Whitney, adopted the Staff Report as part of her evidence in this case. She provided two deeds, as requested by Technical Staff. The first indicates that Ms. Whitney purchased the subject property jointly with another individual in March 1997, and the second indicates that Ms. Whitney became sole owner in October 1999. See Exs. 15 and 16. She stated when the home was inspected before she purchased it, its date of construction was estimated as 1963. Ms. Whitney testified that the house is not occupied by unrelated persons and has no other residential uses besides the main dwelling unit and the basement apartment. She confirmed her understanding that if the special exception is granted, the owner of the property must live in one of the dwelling units, and may not receive compensation for more than one dwelling unit on the property, and that no more than two people can live in the accessory apartment. Ms. Whitney states that the available parking has been adequate for her use and her tenants, and she has had no complaints from neighbors. She agreed to limit her tenants to no more than two cars parked on the street for their own use. She also agreed to fix the two building code violations cited in Mr. Jolly's memorandum, Exhibit 13.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because there may be locations where it is not appropriate. The zoning statute establishes both general and specific standards for special exceptions, and the petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Based on the testimony and evidence of record, I conclude that the instant petition meets the general

and specific requirements for the proposed use, with the conditions recommended at the conclusion of this report. The Petitioner has agreed to satisfy all of these conditions.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed special exception that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed special exception that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff in this case identified the following as physical and operational characteristics necessarily associated with an accessory apartment: the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it; the provision within the apartment of the necessary facilities, spaces and floor area to qualify as habitable space under the

Building Code; a separate entrance and walkway and sufficient lighting; sufficient parking; the existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic and parking activity; and the potential for additional noise. Technical Staff concluded and the Hearing Examiner agrees that the accessory apartment proposed in this case has no unusual physical or operational characteristics, nor are there any unusual site characteristics, therefore the proposed use would have no non-inherent adverse effects.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the DHCA inspection report, and the Petitioner's testimony and written submissions provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:
- (1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed special exception would comply with the standards and requirements set forth for the use in Code §59-G-2.00, as detailed in Part IV.C. below.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the

special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports Technical Staff's finding that the proposed special exception would be consistent with the objectives of the *Takoma Park Master Plan (December 2000)*. The Master Plan supports the existing zoning category, which allows such uses by special exception. It also supports the concept of promoting housing diversity in Takoma Park, which is consistent with permitting accessory apartments.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: The proposed special exception would be in harmony with the general character of the neighborhood considering the cited factors. It would have little impact on population density; it would not result in any changes to the exterior of the house; it would result in a modest increase in intensity of use of the property with no change in the character of such use; it would result in only a minimal increase in vehicular traffic; and only a small number of accessory apartments have been identified in the 60-acre area defined as the general neighborhood. The subject property lacks sufficient on-site parking for both the residents of the main dwelling unit and the residents of the accessory apartment. However, the evidence establishes that with a condition limiting the number of cars to which tenants are entitled, adequate parking is available off-site without adverse effects on the neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence demonstrates that due to the modest impacts of the proposed accessory apartment, the special exception would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: Based on the nature of the use, the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff identified six likely apartment uses within the single-family homes in the 60-acre area defined as the general neighborhood of the subject property. The Hearing Examiner agrees with Staff's conclusion that within an area of this size, adding the accessory apartment proposed here to the number of similar existing uses would not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Moreover, given that the proposed use is residential in nature, it would be very unlikely to alter the predominantly residential nature of the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The Hearing Examiner accepts Technical Staff's conclusion that the proposed special exception would be adequately served by the specified public services and facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined

by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: No subdivision approval would be required. The proposed accessory apartment would generate one additional vehicle trip during the peak hours, far below the 30-trip threshold that triggers Local Area Transportation Review. For purposes of Policy Area Transportation Review, the subject property is located within the Silver Spring/Takoma Park policy area, which has remaining capacity of 2,333 housing units as of February 29, 2004.

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The evidence of record supports the finding that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

C. Specific Standards

The memorandum submitted by DHCA (Ex. 13), the Staff Report (Ex. 14) and the Petitioner's testimony and written submissions provide sufficient evidence that the specific standards set forth in Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.

Conclusion: The apartment is located in the basement of the main dwelling and therefore shares a wall in common, as required for a lot of this size (approximately 6,300 square feet).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

Conclusion: No addition or extension of the main dwelling is proposed.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

Conclusion: The Petitioner estimated that the house is approximately 40 years old.

- (5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

Conclusion: The Petitioner and her tenants are the only residents of the subject property, and no other residential uses exist on the property.

- (6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: As noted by the Technical Staff, the single-family appearance of the dwelling is unaffected by the entrances to the accessory apartment, which are screened from view by a ten-foot, lattice-work fence.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: No changes to the exterior of the building are currently planned in connection with this accessory apartment.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

Conclusion: The accessory apartment is subordinate to the main dwelling, because the apartment occupies most of the basement and the basement is smaller than the first floor, which comprises the main dwelling. While the record does not contain an accurate figure for the total floor area of the apartment, Technical Staff found that because the basement has a footprint of approximately 1,092 square feet, an apartment occupying less than that full space can be assumed to contain less than 1,200 square feet of space. The Hearing Examiner agrees with this conclusion.

59-G § 2.00(b) Ownership Requirements

- (1) – The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

Conclusion: The Petitioner currently lives in the proposed accessory apartment while carrying out repairs, and she plans to eventually move back into the main dwelling and remain there.

- (2) – Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

Conclusion: The Petitioner purchased the property jointly with another individual in March 1997 and became sole owner in October 1999, more than one year before the special exception will take effect, if granted.

(3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

Conclusion: The Petitioner will receive compensation for only one dwelling unit.

(4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.

Conclusion: The Petitioner is the owner of the property.

(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Conclusion: Not applicable

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject lot is approximately 6,300 square feet in size.

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).

Conclusion: As discussed above in connection with Code § G-1.21(a)(7), the Hearing

Examiner agrees with Technical Staff's conclusion that this special exception, if granted, will not result in an excessive concentration of similar uses in the general neighborhood.

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:

- (i) More spaces are required to supplement on-street parking; or
- (ii) Adequate on-street parking permits fewer off-street spaces.

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: The subject property has only one off-street parking space. No parking is permitted on the side of Allegheny Avenue where the subject property is located, but parking is permitted on the other side of the street. The evidence supports Technical Staff's conclusion that with the proposed condition limiting the occupants of the accessory apartment to parking no more than two cars on the street for their own use, adequate parking would be available for the accessory apartment without adverse impacts on the neighborhood.

D. Additional Applicable Standards

In addition to complying with the zoning requirements set forth in Chapter 59-G, an accessory apartment must be approved for habitation by the Department of Housing and Community Affairs. In this case Mr. Jolly, testifying for DHCA, found that the proposed accessory apartment will meet all current standards with the two conditions specified on Exhibit 13 and on page 8 above. As noted, the Petitioner has agreed to meet these conditions.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2599 for a special exception for an accessory apartment located at 6609 Allegheny Avenue, Takoma Park, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by her testimony and exhibits of record;
2. The Petitioner must install a single-cylinder deadbolt lock on the bedroom door;
3. The Petitioner must properly support and secure the kitchen stove top to make it level;
4. The occupants of the accessory apartment may park no more than two cars on the street for their own use at any given time; and
5. The accessory apartment may be inhabited by no more than two persons.

Dated: May 20, 2004

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner

