

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850

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(240) 777-6600

Case No. S-2793

PETITION OF BRUCE SHOOP

OPINION OF THE BOARD

(Opinion Adopted September 14, 2011)

(Effective Date of Opinion: September 29, 2011)

Case No. S-2793 is application for a special exception under Section 59-G-2.11 of the Zoning Ordinance, to allow an accessory apartment. The subject property is Lot 4, Block B, Muncaster Manor Subdivision, located at 18808 Muncaster Road, Derwood, Maryland 20855-1430.

The Hearing Examiner for Montgomery County held a public hearing on the application on June 13, 2011, closed the record in the case on June 20, 2011, and on August 5, 2011, issued a report and recommendation for approval of the special exception.

Decision of the Board: Special Exception Granted Subject to
The Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on September 14, 2011. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception, subject to the following conditions, with revisions to Condition Nos. 2 and 3, as follows:

1. The Petitioner is bound by his testimony, representations and exhibits of record; to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this Opinion.
2. Prior to occupancy, the Petitioner must make the repairs to the accessory apartment needed to comply with the conditions set forth in the

Memorandum of Kevin Martell, Division of Housing and Community Affairs, (Exhibit 16) and any additional repairs as required by DHCA, including, without limitation:

- a. Windows that meet Code standards for emergency egress must be installed in both bedrooms. Must be able to be opened without the use of a tool with a net clear opening width of 24 inches and a minimum net clear opening height of 20 inches, with the bottom of the opening not more than 44 inches above the floor. Window wells that meet Code standards for egress must also be installed
 - b. A permanent heating source capable of maintaining a temperature of 68 degrees Fahrenheit at all times must be installed in the rear bedroom.
 - c. A Montgomery County Department of Permitting Services septic permit must be obtained and finalized.
 - d. The large dirt mounds in the front of the property must be removed.
 - e. The kerosene heater must be removed from the accessory unit. Unvented fuel fired appliances are prohibited.
 - f. All wood posts, columns, roof fascia and soffit trim on house [sic] must be repainted.
 - g. A fire proof hearth must be installed for the living room wood stove. The hearth must extend at least 18 inches in front and 8 inches from the sides.
 - h. A kitchen stove complete with oven and stove top burners must be installed.
 - i. All dysfunctional and untagged motor vehicles, car parts, campers, lawn mowers must be removed.
 - j. The bathroom ceiling must be repaired.
3. The owner must live in one of the dwelling units. Occupancy of the main floor is limited to two unrelated persons or to a family related by blood, marriage or adoption. The number of family related occupants allowed in the accessory apartment will be based on habitable space as determined by the Department of Housing and Community Affairs.
 4. Petitioner must not receive compensation for the occupancy of more than one dwelling unit.
 5. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility

requirements), regulations, directives and other governmental requirements.

On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd, and Catherine G. Titus, Chair, in agreement, 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.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of September, 2011.

Katherine Freeman
Executive Director

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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.