

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2844

PETITION OF DAVID A. AND CARMEN T. DOHENY

OPINION OF THE BOARD

(Opinion Adopted November 28, 2012)
(Effective Date of Opinion: December 13, 2012)

Case No. S-2844 is an application, under Section 59-G-2.00 of the Zoning Ordinance, for a special exception to permit an accessory apartment. The subject property is Lot 10, Block 9 of the Westmoreland Hills Section 1 Subdivision, located at 5120 Duvall Drive, Bethesda, Maryland 20816 in the R-60 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on October 4, 2012, closed the record in the case on October 15, 2012, and on November 9, 2012 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 Hearing Examiner's Report and Recommendation at its Worksession on November 28, 2012. 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:

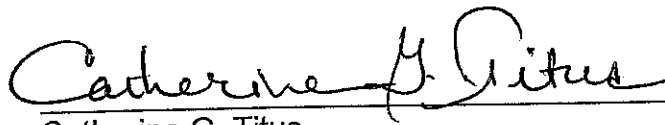
1. The Petitioners are bound by their testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this Opinion;
2. The Petitioners must comply with the conditions set forth in the Memorandum

of Lynn McCreary, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 12):

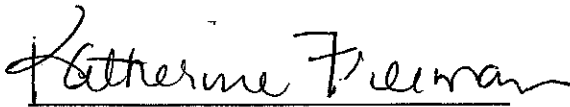
- a. The unit measures 532 square feet of habitable space. Based on Accessory Apartment and habitability requirements, the unit would allow for the occupancy of no more than two unrelated people or a family of three.
 - b. There is adequate off street parking for 2 vehicles parked back to front. On street parking is available.
3. Petitioners must comply with the determination of the Housing Code Inspectors as to limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;
4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
6. Petitioners 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 Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Vice-Chair 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 13th day of December 2012.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above the printed name and title.

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.