

**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-2856

PETITION OF JOSE R. REYES

OPINION OF THE BOARD
(Opinion Adopted March 13, 2013)
(Effective Date of Opinion: March 29, 2013)

Case No. S-2856 is an application for a special exception, under Section 59-G-2.00 of the Zoning Ordinance, to allow an accessory apartment. The subject property is Lot 1, Block 7, Parkway Subdivision, located at 11125 Nicholas Drive, Silver Spring, Maryland 20902, in the R-90 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on January 10, 2013, closed the record in the case on January 25, 2013, and on February 25, 2013, issued a Report and Recommendation for approval of the special exception.

Opinion of the Board:	Special Exception Granted Subject to The Conditions Enumerated Below.
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The Board of Appeals considered the Report and Recommendation at its Worksession on March 13, 2013. 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:

1. Petitioner is bound by his testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in this Opinion and in the Hearing Examiner's Report and Recommendation;
2. Petitioner must comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of

Housing and Code Enforcement dated December 26, 2012 (Exhibit 13), and Addendum dated January 25, 2013 (Exhibit 23), as follows:

- a. Bedroom 1, Install egress window no more than 44" from floor to window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24" and a minimum width of 20";
 - b. Bedroom 2, Install egress window no more than 44" from floor to window. Opening and window must be 5 square feet net opening. Window must be a minimum height of 24" and a minimum width of 20";
 - c. [Additional room 3]: Based on Petitioner's testimony decreasing the number bedrooms from three to two, Mr. Goff amended his report to reflect that the room on the North East corner of the basement (identified on the Floor Plan as "room 3" marked as Exhibit 18) cannot be used as a bedroom or for sleeping due to the lack of an emergency egress. No sleeping is permitted in this room unless an egress window meeting the same requirements as noted above for bedrooms 1 and 2 is installed (Exhibit 23).
 - d. Install adequate heat source to bedroom 2 and 3;
 - e. Install range/stove in kitchen;
 - f. Bulkhead in living room and kitchen must be move up to 78" from the floor;
 - g. Install [standard residential exterior] light over the door to the accessory apartment;
 - h. Install [standard residential exterior] lighting on right side of house to light the walkway to the accessory apartment [entrance]. Pursuant to Mr. Goff's testimony during the hearing, Petitioner can install low-voltage ground lights to illuminate the pathway to the accessory apartment as an alternative to installing an exterior light fixture to the right side of the house;
 - i. All work must have approved permits;
 - j. The driveway can accommodate 2 cars;
 - k. There is off-street parking (No permit needed); and
 - l. There is 558.94 [square] feet of habitable space. The total [square] feet of the accessory apartment is 972.98. [Occupancy is limited to 2 unrelated persons or a family of 3.
3. Petitioner must comply with the determination of the Housing Code Inspector as to the limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
 4. Petitioner must add standard residential exterior lighting to the North East corner of the dwelling to illuminate the area where the stone

pathway to the accessory apartment connects to the driveway;

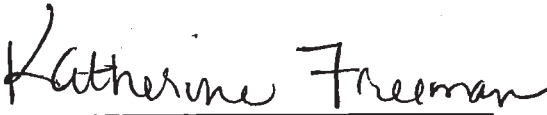
5. Petitioner will replace the 200 watt bulbs being used in the existing front and rear exterior light fixtures with standard residential bulbs that are 100 watts or less.
6. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
7. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or registered living unit;
8. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
9. 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. Petitioner 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 John H. Pentecost, seconded by Carolyn J. Shawaker, with Stanley B. Boyd, 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 29th day of March, 2013.

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:

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.

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.