

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. S-2698

PETITION OF SHEILA R. AND ACHINTYA PAL

OPINION OF THE BOARD

(Opinion Adopted November 14, 2007)

(Effective Date of Opinion: November 27, 2007)

Case No. S-2698 is an application for a special exception for an accessory apartment, pursuant to Section 59-G-2.00 of the Zoning Ordinance. The Hearing Examiner for Montgomery County held hearings on the application on July 2, 2007 and July 12, 2007, closed the record in the Case on October 18, 2007, and on October 24, 2007 issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception **Granted** Subject
To Conditions Enumerated Below.

The subject property is Lot 16, Block A, 14825 Botany Way, North Potomac, Maryland 20878 in the PD-3 Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on November 14, 2007. After careful consideration and review of the record in the case, the Board notes the Hearing Examiner's observation that "Much of the opposition in this case is based upon the alleged violation of the private Declaration of Covenants which would result from establishment of an accessory apartment." [Report and Recommendation, p.4], and concurs with the Hearing Examiner that any affected party is free to pursue any available remedy with regard to enforcement of private covenants in an appropriate forum, and the Board's decision that the special exception be granted in this case should not be taken as reflecting any opinion with regard to the covenants in question. On a motion by Wendell M. Holloway, seconded by Caryn L. Hines, with Catherine G. Titus and Allison Ishihara Fultz, Chair in agreement, and Donna L. Barron, Vice-Chair necessarily absent, the Board adopts the Report and Recommendation, and grants the special exception subject to the following conditions:

1. Petitioners shall be bound by all of their testimony and exhibits of record, and by the testimony of their witnesses and representations of counsel to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in the Board's opinion.
2. Occupancy of the accessory apartment is limited to no more than two unrelated persons or a family not to exceed three persons.
3. The Petitioners shall install single cylinder, key operated deadbolt locks, key operated from the outside and thumb latched on the inside, on both doors which access the accessory apartment, in accordance with the instruction set forth in the Memorandum of Steve Morris, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 20) prior to occupancy.
4. Petitioners must install a pathway from the front of their home to one of the entrances to the accessory apartment in the rear, in accordance with the final site and landscape plans (Exhibits 50(a), 50(b) and 69(b), including its attachments).
5. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located.
6. There must be no guest room for rent, boardinghouse or registered living unit on the premises in addition to the accessory apartment. Petitioners must not receive compensation for the occupancy of more than one dwelling unit.
7. Petitioners shall have any new tenants of the accessory apartment sign a lease agreement, for a minimum of one year, with clearly stated provisions controlling noise, litter, pets, parking and other activities and actions that could have an adverse impact on neighboring properties.
8. The tenants of the accessory apartment may have no more than two cars, in total, housed within the general neighborhood, and Petitioners must include, in their lease agreement with any new accessory apartment tenants, a provision that restricts the tenants to parking either in the garage or on the driveway of their home.
9. 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.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of November, 2007.

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.