

**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-2833

PETITION OF BELAY TESFAMARIAM

OPINION OF THE BOARD

(Opinion Adopted July 11, 2012)

(Effective Date of Opinion: August 3, 2012)

Case No. S-2833 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 A, located at 1000 Heartfields Drive, Silver Spring, Maryland 20904, in the R-90 Zone

The Hearing Examiner for Montgomery County held a hearing on the application on May 17, 2012, closed the record in the case on May 29, 2012 and on June 26, 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 Report and Recommendation at its Worksession on July 11, 2012. The Board has carefully considered the Report and Recommendation and the record in the case. The Board finds that it does not have jurisdiction to require on-street parking, and revises Condition No. 7 consistent with this finding. With the change to Condition 7, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.

2. The Petitioner must comply with the conditions set forth in the Memorandum of Timothy Pillgreen, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 16):

- a. Install electric stove in kitchen.
- b. The Accessory Apartment is 538 square feet. 150 square feet for the first person and 100 square feet for each [additional] person. A family of three or two unrelated people may live in the unit.
- c. There is off-street parking for 4 vehicles.

3. Petitioner must comply with DHCA's determination of the maximum permitted occupancy for the accessory apartment (i.e., the accessory apartment may be occupied by no more than two (2) unrelated persons, or a family not to exceed three (3) people), and other DHCA directives needed to ensure that the accessory apartment is maintained up to Code, as listed in Exhibit 16;

4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;

5. 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;

6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;

7. Petitioner must make two off-street parking spaces available for his accessory apartment tenants, on the driveway

8. 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 Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Walter S. Booth, 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 3rd day of August, 2012.

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.

