

**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-2838

PETITION OF CAROL E. FLYNN

OPINION OF THE BOARD
(Opinion Adopted April 3, 2013)
(Effective Date of Opinion: April 19, 2013)

Case No. S-2838 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 18, Block 8, Westboro Subdivision, located at 4512 Chase Avenue, Bethesda, Maryland 20814 in the R-60 Zone.

The Hearing Examiner for Montgomery County convened a hearing on the application on July 12, 2012. Following the hearing, the Hearing Examiner discovered that approval of the special exception would necessitate a variance from the minimum lot size for the zone. The Hearing Examiner re-opened the record to allow the Petitioner time to seek a variance. The Board accepted a variance application on November 8, 2012, and on February 12, 2013, granted the requested variance. The Hearing Examiner closed the record in this case on March 14, 2013, and on March 19, 2013 issued a Report and Recommendation for approval of the special exception.

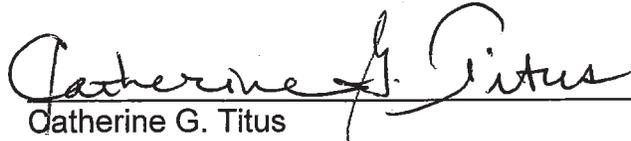
Decision of the Board: **Special Exception Granted Subject to
The Conditions Enumerated Below.**

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on April 3, 2013. After careful consideration and review of the record, the Board finds that an additional condition of approval is needed to require the Petitioner to make a parking permit available to the accessory apartment tenant, and with that change, adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioner is bound by her 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. The Petitioner 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 accessory apartment measure 407 square feet of habitable [space]. Two persons may occupy the unit.
 - b. There is adequate off street parking for 2 vehicles parked back to front. On street parking is available.
 - c. A permanently installed cook top along with a portable convection oven may be installed in lieu of a conventional kitchen stove. All required permits must be acquired and finalized and all work must be done in a professional and workmanlike manner.
3. The Petitioner must make a parking permit for on-street parking available to the accessory apartment tenant.
4. The 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. The Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
7. The 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.

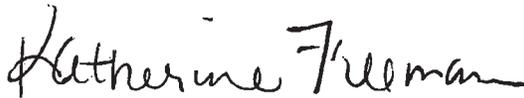
On a motion by Carolyn J. Shawaker, seconded by David K. Perdue, Vice-Chair, with Stanley B. Boyd, John H. Pentecost and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

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 19th day April, 2013.



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.

