

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2665

PETITION OF DONOVAN J. PIRKLE

OPINION OF THE BOARD

(Opinion Adopted June 28, 2006)
(Effective Date of Opinion: July 17, 2006)

Case No. S-2665 is an application, pursuant to Section 59-G-2.00 of the Montgomery County Code, for a special exception to permit an existing accessory apartment which is located above a detached garage which is connected to the main house by a breezeway. The Hearing Examiner for Montgomery County held a hearing on the application on April 28, 2006, closed the record in the case on May 28, 2006, and on June 14, 2006 issued a Report and Recommendation for approval of the special exception, with conditions.

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

The subject property is Lot 5, Block A, Grove Hill Farm Subdivision, at 313 Haviland Mill Road, Brookeville, Maryland 20833 in the RC Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on June 28, 2006. Section 59-G-2.00(a)(2) provides:

The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and
- (ii) The apartment will house a care-giver ground by the Board to be needed to provide assistance to a senior adult, ill or disabled relative of the owner-occupant.

In his application, Mr. Pirkle proposes to enclose the breezeway between his house and garage in order to create a party wall between the accessory apartment and the main dwelling. The Hearing Examiner recommended approval of this approach. The Board finds that in the sense intended in Section 59-G-2.00(a)(2), a party wall is a wall common to and shared by two adjoining buildings, but that Mr. Pirkle cannot create such a wall between his home and his accessory apartment by enclosing his breezeway. The Board finds, nonetheless, that since his lot contains 2.5 acres, his accessory apartment "may be added to [his] existing one-family detached dwelling" as provided in this section "for lots over 2 acres" by the enclosure of the breezeway to continuously connect the house and the garage. Therefore, after careful consideration and review of the record in the case, the Board adopts the Report and Recommendation with the one change described above, and **grants** the special exception, subject to the following conditions:

1. The Petitioner shall be bound by all of his testimony, representations and exhibits of record identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. The Petitioner shall take the following steps to comply with the items set forth in the Memorandum of Robert Dejter, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 14):
 - a. The property is served by septic system. The owner must obtain a written confirmation of adequacy statement from the Department of Health Well and Septic Division stating that the accessory apartment is equipped with satisfactory sewage service.
 - b. The owner must install an interconnected hard wired (with battery back-up) smoke detector in garage that is connected with smoke detector in accessory apartment.
 - c. The accessory apartment contains approximately 345 square feet and may be occupied by no more than 2 persons.
3. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
4. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;

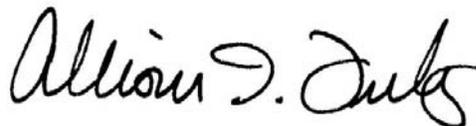
5. Petitioner shall have any new tenants of the accessory apartment sign a lease agreement, for a minimum of one year, with clearly stated provisions controlling noise, pets, parking and other activities and actions that could have an adverse impact on neighboring properties;
6. Petitioner must include, in his lease agreement with any new accessory apartment tenants, a provision that restricts the tenant to parking in the off-street, gravel parking area, and Petitioner should inform his current tenant of that restriction; and
7. 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.

The Board also notes, as did the Hearing Examiner, that:

Any affected party is free to pursue any available remedy with regard to enforcement of any 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 any such private covenants.

On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, 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.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book

of the Board of Appeals for
Montgomery County, Maryland
this 17th day of July, 2006.

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.