

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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Rockville, Maryland 20850

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

(240) 777-6600

Case No. S-1352

PETITION OF PAUL ZALESKI

RESOLUTION TO REVOKE SPECIAL EXCEPTION

(Resolution Adopted April 2, 2008)

(Effective Date of Resolution: May 8, 2008)

Case No. S-1352 is a special exception for an accessory apartment which the Board of Appeals granted to Paul Zaleski on March 29, 1988, based upon a Report and Recommendation from the Hearing Examiner dated March 11, 1988. On April 2, 2008, pursuant to the provisions of Section 59-G-1.3(d) of the Zoning Ordinance, the Board of Appeals held a Show Cause hearing for revocation of the special exception due to abandonment. Robert Goff, a Housing Code Inspector for the Department of Housing and Community Affairs appeared at the hearing. Mr. Zaleski, the special exception holder and property owner, did not appear at the hearing.

FINDINGS OF FACT

1. The subject property is Lot 29, Block 10, West Chevy Chase Heights Subdivision, located at 4611 Chase Avenue, Bethesda, Maryland, in the R-60 Zone.
2. The Show Cause hearing was based upon a memorandum request, dated October 15, 2007, from Robert Goff, Housing Code Inspector. Mr. Goff's memorandum informs the Board that he inspected the special exception on July 18, 2007, at which time he noted 10 violations, and on October 8, 2007, at which time he noted that none of the violations had been abated [Exhibit No.18]. Mr. Goff also advised the Board that the accessory apartment has been vacant since August of 1998.
3. As required by Section 59-G-1.3(d)(7-8) of the Zoning Ordinance, written Notice of the hearing was issued to Mr. Zaleski by certified mail. The record reflects two unsuccessful attempts by the Postal Service to deliver the Notice, which was returned to the Board [Exhibit No. 21].

4. At the Show Cause hearing Mr. Goff testified that his knowledge of the vacancy of the accessory apartment is based upon conversation with Mr. Zaleski, together with his examination of inspection records by the Department of Housing and Community Affairs dating back to July 3, 1998.

CONCLUSIONS OF LAW

1. Section 59-G-1.3(d) of the Zoning Ordinance states that a special exception is considered abandoned where there has been a “cessation of use of the special exception or the cessation of activity necessary to the operation of the special exception use for a period of at least 6 months’ duration.”
2. The Board finds that that the special exception is abandoned, and must be **revoked**.

On a motion by Catherine G. Titus, Vice-Chair, seconded by Wendell M. Holloway, with Caryn L. Hines, David K. Perdue 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 8th day of May, 2008.

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.