

**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-2713

PETITION OF BRADLEY D. STEWART

OPINION OF THE BOARD

(Opinion Adopted March 19, 2008)
(Effective Date of Opinion: April 10, 2008)

Case No. S-2713 is a petition for a special exception, pursuant to Section 59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment. The Hearing Examiner for Montgomery County held a public hearing on the application on January 4, 2008, closed the record in the case on February 29, 2008, and on March 8, 2008 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 subject property is Lot 8, Block B, Gum Springs Subdivision, 14620 Claude Lane, Silver Spring, Maryland 20905, in the R-200 Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on March 19, 2008. After careful consideration and review of the record in the case, on a motion by Caryn L. Hines, seconded by Wendell M. Holloway with David K. Perdue and Allison Ishihara Fultz in agreement and Vice-Chair Catherine G. Titus necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. Petitioners shall be bound by their 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. Petitioners must comply with the terms specified in the Housing Code Inspector's report of December 20, 2007 (Exhibit 13), as follows:
 - a. The owner must apply for a building, electrical and plumbing permit, etc. if he plans to construct the accessory apartment.
 - b. The owner must comply with all requirements pertaining to new construction and obtain approval from Permitting Services on all work done.
 - c. The owner must submit a site plan and approval of the new construction to the Department of Housing and Community Affairs and request an inspection to determine if the property complies with Chapter 26, Montgomery County Housing and Building Maintenance Standards.
1. Based on habitable space in the apartment (765 square feet), no more than two unrelated persons may reside in the unit, or a family of up to six individuals;
2. At least one of the Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
3. Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
4. Petitioners must make at least one of the driveway parking spaces on their property available to the accessory apartment tenants;
5. The total impervious area on the site may not exceed 12.9% specified in their Site Plan, Exhibit 28 (*i.e.*, below the current level of 13% impervious area), in accordance with the restrictions contained in the Environmental Overlay Zone for the Upper Paint Branch Special Protection Area, Zoning Ordinance §59-C-18.152(a)(1)(A). See Exhibit 26(a).
6. Prior to any land disturbance, Petitioners must submit a tree protection plan to M-NCPPC Environmental Planning staff for review and approval. The tree protection plan must be prepared by a qualified professional, and it must show measures to protect specific trees identified in the plan entitled "Combined NRI/FSD" (dated 12/27/07) and approved as part of forest conservation plan exemption no. 4-2008120E.
7. 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 10th day of April, 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.