

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. S-2728**

**PETITION OF GERVER UMANZOR**

**OPINION OF THE BOARD**

(Opinion Adopted September 10, 2008)

(Effective Date of Opinion: October 27, 2008)

Case No. S-2728 is an application 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 hearing on the application on June 16, 2008, closed the record in the case on July 7, 2008, and on August 5, 2008, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 4, Block 17, Hillandale Subdivision, located at 2006 Gatewood Place, Silver Spring, Maryland, 20903, in the R-90 Zone.

**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 September 10, 2008. After careful consideration and review of the record in the case, with a revision to Condition 7, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record to the extent that such testimony and evidence are 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 correct all issues specified in the Housing Code Inspector's report of June 10, 2008 (Exhibit 16(a)), as follows:
  - a. A stove is required for the kitchen.
  - b. The installation of the required egress windows in the bedrooms must be completed.
  - c. The small room adjacent to the bathroom may not be used as a bedroom.

This room cannot be used as habitable space because it does not have windows. This room may be used for storage purposes only.

- d. Based upon the square footage requirement, the unit may be occupied by no more than two unrelated occupants, or by a family of up to 5 people
  - e. An exterior walkway for the accessory apartment must be installed to standards specified by the Housing Code Inspector at the location designated in the revised Landscape and Lighting Plan (Exhibit 24(b));
1. Based on habitable space in the apartment (638 square feet), no more than two unrelated persons may reside in the unit, or a family of up to five individuals;
  2. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
  3. There must be no guest room for rent, boardinghouse or registered living unit on the premises in addition to the accessory apartment. Petitioner must not receive compensation for the occupancy of more than one dwelling unit;
  4. Petitioners must make at least two of the six driveway/garage parking spaces on their property available to the accessory apartment tenants;
  5. With regard to commercial vehicles, Petitioners must comply with Zoning Ordinance §59-C-1.31(b), f.n. 12, which governs the number of commercial vehicles permitted on site in the R-90 Zone, and is quoted below<sup>1</sup>;
  6. Petitioners shall have any tenants of the accessory apartment sign a lease agreement, for a minimum of one year, requiring that the tenants conduct themselves lawfully, and in accordance with clearly stated provisions controlling

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<sup>1</sup> Zoning Ordinance §59-C-1.31(b):

*f.n. 12 . . . One commercial vehicle may be parked on any lot or parcel provided the vehicle meets all the following: (1) 10,000 pounds or less gross vehicle weight, (2) 19 feet or less in length measured from the extremes of the vehicle or load, or (3) 8 feet or less in height including racks needed for materials. A tow truck is not permitted to park with a disabled car attached. One recreation vehicle may be parked on a lot or parcel, however it must not be used for dwelling purposes for more than 3 days in any month. . . .*

Commercial vehicles are defined in Zoning Ordinance §59-A-2:

*Commercial vehicle: A duly licensed and registered vehicle used to transport passengers or property to further a commercial enterprise. A commercial vehicle must not be used as an office nor have customer entry for a retail transaction. For the purposes of this Chapter the following are also commercial vehicles:*

- (a) *vehicles of more than 10,000 pounds gross vehicle weight;*
- (b) *vehicles with a manufacturers rated load capacity of more than 3/4 ton;*
- (c) *vehicles registered as commercial vehicles by the Motor Vehicle Administration of the state of Maryland or other jurisdiction;*
- (d) *"for hire" vehicles as classified by the Maryland Motor Vehicle Administration;*
- (e) *a funeral motor vehicle or ambulance as classified by the Maryland Motor Vehicle Administration;*
- (f) *a freight trailer or semitrailer as defined by the Maryland Motor Vehicle Administration;*

*A recreational vehicle, or a farm machine or a farm vehicle for agricultural use is not a commercial vehicle.*

noise, litter, pets, parking and other activities and actions that could have an adverse impact on neighboring properties (e.g., late-night music, leaving trash on the streets or the neighbors' properties, walking on the neighbors' lawn or leaving equipment and supplies thereon). Petitioners will continue to be responsible for insuring that noise, litter, pets, parking and other tenant activities and actions that could have an adverse impact on neighboring properties are avoided; and

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 the entire 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 David K. Perdue, seconded by Catherine G. Titus, Vice-Chair, with 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.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 27<sup>th</sup> day of October, 2008.

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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.