

**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-2739

PETITION OF FRAYDA AND DANNY PENINI

OPINION OF THE BOARD

(Opinion Adopted February 11, 2009)
(Effective Date of Opinion: March 5, 2009)

Case No. S-2739 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 January 12, 2009, closed the record in the case on January 16, 2009, and on January 23, 2009, issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 33, Block C, located at 11913 Seven Locks Road, Potomac, Maryland, 20854, in the R-90 Zone.

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 February 11, 2009. After careful consideration and review of the record, 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 identified in the Hearing Examiner's Report and in the opinion of the Board;
2. The Petitioners must perform the repairs necessary to comply with the conditions set forth in the January 6, 2009 Memorandum of Timothy Pillgreen, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
 - a. The accessory apartment furnace room must be enclosed with adequate surface area designed for ventilation of water heater and furnace.

- b. The accessory apartment bathroom requires an exhaust fan,
 - c. The owner must obtain and finalize permits for the installation of the kitchen
 - d. The unit measures total 698 Sq Ft and the bedroom measures 155 Sq Ft. Based on Montgomery County Code the accessory apartment can not be occupied by more than 2 unrelated people or 3 family members.
 - e. The window in the basement bedroom must meet Montgomery County Code requirements for emergency egress windows.
3. Based on habitable space in the apartment (698 square feet), no more than 3 members of a family or two unrelated persons may reside in the accessory apartment;
 4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
 5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
 6. Petitioners must make two parking spaces on their driveway available for use by the accessory apartment tenants; 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 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, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd 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 5th day of March, 2009.

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.