

**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-2798

PETITION OF WINOA E. HIDEN

OPINION OF THE BOARD

(Opinion Adopted: June 1, 2011)

(Effective Date of Opinion: June 10, 2011)

Case No. S-2798 is an application, under Section 59-G-2.00 of the Zoning Ordinance, for a special exception to allow an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on April 14, 2011, closed the record in the case on May 6, 2011, and on May 20, 2011 issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 12, Block A, Three Meadows Subdivision, located at 14212 Northwyn Drive, Silver Spring, Maryland 20904, in the R-200 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 June 1, 2011. 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. The Board finds that Petitioners cannot control the availability of on-street parking and revises Condition No. 6 accordingly, as reflected below.

1. The Petitioners shall be bound by all of their testimony, representations and exhibits of record identified in the Hearing Examiner's Report and in this opinion.

2. Petitioners must comply with DHCA's determination of the maximum permitted occupancy for the accessory apartment (*i.e.*, the accessory apartment may be occupied by no more than two (2) unrelated persons or a family not to exceed three (3) persons), and the other DHCA directives needed to ensure that the

accessory apartment is maintained up to Code, as listed in Exhibit 21:

- a. The unit will accommodate 2 unrelated people or a family of 3 based on square footage code requirements.
 - b. The kitchen area cannot be used for sleeping purposes.
 - c. One window in the bedroom must be enlarged to meet the following emergency egress standards for Montgomery County.
 - The minimum net clear opening of 5.7 square feet.
 - The minimum net clear opening height shall be 24 inches.
 - The minimum net clear opening width shall be 20 inches.
 - The window sill height can not be more than 44 inches above the floor.
 - Emergency escape and rescue openings shall be operational from the inside of the room without the use of keys, tools or special knowledge.
3. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located.
4. Petitioners must not have a guest room for rent, a boardinghouse or a registered living unit, in addition to the accessory apartment, and they must not receive compensation for the occupancy of more than one dwelling unit.
5. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons.
6. Petitioners must make parking spaces available for their accessory apartment tenants, and Petitioners must provide in their lease for the accessory apartment that tenants must not park on the curve in Northwyn Drive abutting the southeastern frontage of the subject site.
7. Petitioners must also provide in their lease for the accessory apartment that tenants must not park in the grass on any yard on the site and must not use the unapproved gravel/grass driveway on the site for parking or vehicular traffic.
8. 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 Stanley B. Boyd, with Walter S. Booth, Carolyn J. Shawaker 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 10th day of June, 2011.

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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.