

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. A-6411

PETITION OF JAMES LEEPER

OPINION OF THE BOARD
(Opinion Adopted July 10, 2013)
(Effective Date of Opinion: July 25, 2013)

Case No A-6411 is an application for variances for a shed. The proposed construction requires two 3.50-foot variances, as it proposed to be located within 1.50 feet of the rear lot line and within 1.50 feet of the side lot line. The required rear lot line setback is 5.00 feet in accordance with Section 59-C-1.326(a)(3)(B) of the Montgomery County Zoning Ordinance, codified as Chapter 59 of the Montgomery County Code (the "Zoning Ordinance"), and the required side lot line setback is 5.00 feet under 59-C-1.326(C) of the Zoning Ordinance.

Pursuant to Section 59-A-4.11(b) of the Zoning Ordinance, the Board of Appeals held a hearing on the application on July 10, 2013. James Leeper appeared and testified in support of the application. Megan Leeper also appeared.

The subject property is Lot 4, Block E, Henderson's Addition to Woodside Subdivision, located at 1707 Noyes Lane, Silver Spring, Maryland, 20910, in the R-60 Zone.

Decision of the Board: Requested Variances **Granted.**

EVIDENCE PRESENTED

1. Mr. Leeper stated that the variances are needed to install a backyard shed, and that the location for the shed was chosen because it is the flattest area in the yard. The proposed dimensions for the shed are twelve feet long by seven feet deep, six feet ten inches tall in the front and seven feet six inches tall at the rear.

In his written statement and in his testimony, Mr. Leeper stated that the subject property slopes approximately 10 feet in elevation from the front lot line to the rear lot line, and that "The slope of the property becomes more pronounced beginning at the front line of the residence, and is most severe in the rear one-third of the Property" [Exhibit Nos. 3, 4a and 5f]. In response to a Board question, Mr. Leeper stated that as a construction project manager, he is professionally qualified to evaluate the slope of the yard.

Mr. Leeper stated that the severity of the slope in his yard is not shared by other properties around it. He explained that his own yard may be more sloped than others because of the location of a storm drain inlet directly behind his property. [Exhibit No. 5d].

2. Mr. Leeper stated that the subject property is substandard in size for the zone. [Exhibit 4c].

3. Mr. Leeper stated that locating the shed in compliance with the setbacks would necessitate significant excavation, with possible negative impact on the roots of mature trees, or the necessity to construct a retaining wall, which could alter the drainage from his property to surrounding properties.

4. The record reflects that there is a six foot privacy fence around the rear yard of the property [Exhibit Nos. 3, 4, 5e and 5f]. Immediately to the rear of the subject property there is a wooded area, approximately fifty feet wide, which runs between the properties on the north side of Noyes Lane and the properties on the south side of Leighton Wood Lane [Exhibit Nos. 4d, 5b, 5c and 7b].

5. Mr. Leeper stated that he sent a letter to his neighbors, explaining the variance request, and that he received no inquiries or comments about the letter.

FINDINGS OF THE BOARD

Based upon the Applicant's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the application standards and requirements set forth in Section 59-G-3.1 of the Zoning Ordinance as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property;

The Board finds that the subject property's slope is a peculiar condition of the property. Due to the location of the storm drain inlet, the slope is more severe

on the subject property than on surrounding lots. The Board finds that requiring the Applicants to locate the shed in compliance with the required five-foot setback would necessitate significant excavation, possibly damage the roots of mature trees and possibly cause deleterious drainage onto neighboring properties. The Board finds that this would cause an unusual practical difficulty.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;

The Board finds that the proposed location of the shed is dictated by the yard's slope and that the requested variances are the minimum needed to place the shed in the flattest available area.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property; and

The Board finds that the addition of a shed to the subject property does not change the residential use of the property or in any way contradict the applicable master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. These provisions, however, shall not permit the board to grant any variance to any setback or yard requirements for property zoned for commercial or industrial purposes when such property abuts or immediately adjoins any property zoned for residential purposes unless such residential property is proposed for commercial or industrial use on an adopted master plan. These provisions shall not be construed to permit the board, under the guise of a variance to authorize a use of land not otherwise permitted.

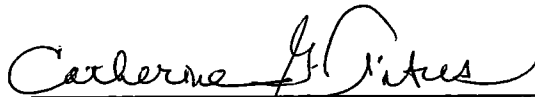
The Board finds that the shed will be largely screened from neighbors' view by the existing six-foot fence on the property. The Board further finds that the fifty-foot wooded area to the rear of the property buffers properties located on Leighton Wood Lane, to the rear of the subject property from any impact of the shed.

Accordingly, the requested variance of 3.50 feet from the required five-foot side lot line setback and the requested variance of 3.50 feet from the required five-foot rear lot line setback are granted subject to the following conditions:

1. The Applicant shall be bound by his testimony and exhibits of record, to the extent that such evidence and testimony are identified in this Opinion.
2. Construction must be completed according to the plan entered in the record as Exhibit No. 5a.

On a motion by Stanley B. Boyd, seconded by John H. Pentecost, with Carolyn J. Shawaker and Catherine G. Titus, Chair, in agreement and David K. Perdue, Vice-Chair, necessarily absent, the Board adopted the following Resolution:

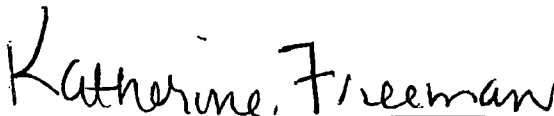
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Catherine G. Titus

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 25th day of July, 2013.



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 twelve (12) month period within which the variance granted by the Board must be exercised.