

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

**(240) 777-6600**

**Case No. A-6418**

**PETITION OF 7025 MACARTHUR, LLC**

**OPINION OF THE BOARD**

(Opinion Adopted November 20, 2013)  
(Effective Date of Opinion: December 20, 2013)

Case No. A-6418 is an application for variances to construct a detached garage. The proposed construction requires a four-foot variance as it is within three feet of the rear lot line. The required setback is seven feet under Section 59-C-1.326(a)(3)(B) of the Zoning Ordinance. The proposed construction also requires a 56-foot variance as it is within four feet of the front lot line. The required setback is 60 feet, under Section 59-C-1.326(a)(3)(A) of the Zoning Ordinance.

The Board of Appeals held hearings on the application on October 2, 2013, and November 20, 2013. Norman James Graham-Yooll appeared and gave testimony in support of the application.

Decision of the Board:

Requested Variances Granted.

**EVIDENCE PRESENTED**

1. The subject property is Lot P32, Block 2, Glen Echo Heights Subdivision, located at 7025 MacArthur Boulevard, Bethesda, Maryland 20816, in the R-90 Zone.
2. Mr. Graham-Yooll testified that he proposes to rebuild the existing garage on its existing footprint, with the same dimensions except for the height, which he proposes to increase slightly, in order to accommodate an overhead garage door.

The existing garage violates the current rear lot line and front lot line setbacks.

Mr. Graham-Yooll stated that the lot is constrained by the presence of a very large, very old sycamore tree and by topography which slopes significantly upward, away from the garage and house [See Exhibit No.4(c)].

## **FINDINGS OF THE BOARD**

Under Section 59-G-3.1. of the Zoning Ordinance, the Board of Appeals may grant petitions for variances, as authorized in Section 59-A-4.11(b), upon proof by a preponderance of the evidence that:

- (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;
- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions;
- (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
- (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 property's very steep topography, and the presence of the very large, old sycamore tree, are conditions that are unique to this specific property and which preclude construction of a garage elsewhere on the lot.

The Board further finds that the strict application of the front and rear setbacks would therefore prevent the Applicant from rebuilding the existing garage or from having a garage anywhere on the lot, posing a practical difficulty for the Applicant.

The Board finds that reconstruction of the existing garage on the existing footprint, with a slight increase in height is the minimum reasonably necessary to overcome the property's exceptional conditions.

The Board finds that reconstruction of the existing garage in its current location continues a residential use on the residentially zone property that will not impair the intent, purpose or integrity of the general plan or the approved area master plan at all.

The Board finds that reconstruction of the existing garage on its current footprint, particularly in light of the topography of the property, meaning that the garage is at a lower elevation than the adjoining residential property, will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Accordingly the requested variance of four feet from the required seven foot rear lot line setback and the requested variance of 56 feet from the required 60-foot front 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 plans entered in the record as Exhibit Nos. 4(a-c) and 5(a-d).

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

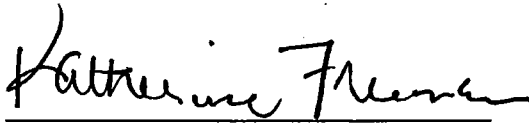
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Catherine G. Titus

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 20<sup>TH</sup> day of December, 2013.

A handwritten signature in cursive script, reading "Katherine Freeman". The signature is written in dark ink and is positioned above the printed name and title.

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.