

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6485

PETITION OF GLENN ROSENBERG AND NHI NGUYEN

OPINION OF THE BOARD

(Public Hearing Date: January 20, 2016)
(Effective Date of Opinion: February 12, 2016)

Case No. A-6485 is an application by Glenn Rosenberg and Nhi Nguyen for a variance of 3.08 feet from the 10-foot rear lot line setback required by Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. The Petitioners seek the variance for an existing structure/shed.

The Board of Appeals held a hearing on the application on January 20, 2016. Both Petitioners appeared in support of the application, although only Mr. Rosenberg testified.

Decision of the Board: Variance **Granted**.

EVIDENCE PRESENTED

1. The subject property is Lot 11, Block A, 0020 Northwood Park Subdivision, located at 300 Belton Road, Silver Spring, Maryland, 20901, in the R-60 Zone.
2. The subject property is located at the southwest corner of Belton Road and Cavalier Drive, bordered by Belton on the north side and Cavalier on the east side. See Exhibits 4 and 7. While Mr. Rosenberg testified that he considers his house to front on Belton Road, for zoning and setback purposes, the shared property line between the subject property and its abutting neighbor to the west along Belton is considered the rear lot line, and the shared property line between the subject property and the abutting neighbor to the south along Cavalier is considered the side lot line.
3. The requested variance is for an existing structure/shed that is located in the rear yard and extends into the rear setback, in the southwest corner of the property.

4. Mr. Rosenberg testified that he has lived in the subject property since 1976. He testified that the subject property is a corner lot, and that his lot is the only lot of the four corner lots at the intersection of Belton and Cavalier with a sloped front yard.

5. Mr. Rosenberg testified that the existing structure/shed is located in the only possible place on the subject property because of the restriction that accessory structures be located in the rear yard, and because there is no other workable location in the buildable area of his rear yard due to its steep topography. See Exhibits 5(c) and (d). He further testified that if he were to locate the structure/shed elsewhere in the buildable area of his rear yard, it would require excavation and retaining walls; he noted that he already experiences problems with erosion in his rear yard.

6. Mr. Rosenberg's Petition for Variance states that the buildable area in his rear yard is on a steep hill, and that most of the rear yards in his vicinity are level. See Exhibit 1.

7. Mr. Rosenberg testified that in 2008, when he first contemplated purchasing this structure/shed, he contacted DPS to determine the necessary setbacks, and was told that the structure needed to be set back 5 feet from the shared property line along Belton, and 5 feet from the shared property line along Cavalier. See Exhibit 8(b). His written statement indicates that he had a land survey done to ensure that he had adequate space to properly place the structure/shed, and that because of the slope in his rear yard, he had to pour concrete pads to ensure that when the structure was placed, it would be level. See Exhibit 3(a). Mr. Rosenberg testified that he had taken measures to improve the appearance of this structure; his written statement also makes this point.

8. The record contains letters from several neighbors who live across the street from the subject property indicating that they do not object to the current placement on this structure/shed. See Exhibits 11 – 13. The letter at Exhibit 12 notes that "because [Petitioners'] lot is on a hill, the shed is probably in the best or only place he can put it." Mr. Rosenberg testified that he would have included a letter from his neighbor on Belton Road, but that that neighbor passed away.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the buildable area in the rear yard of the subject property is encumbered with a severe slope which constrains the available options for placement of this structure/shed.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

There is no evidence in the record to suggest that the Petitioners created or exacerbated the slope in their rear yard.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the sloped topography of this corner lot creates a rear yard with an extremely constrained area within the buildable envelope in which to be able to locate an accessory structure/shed without the need for excavation and retaining walls on a property that already experiences erosion, creating a practical difficulty for the Petitioner. Per the testimony of the Petitioner, and as corroborated by the letter from Petitioner's neighbor at Exhibit 12, the Board finds that the current location is the only feasible rear yard location for the placement of this structure/shed. The Board finds that at 3.08 feet, the requested variance is the minimum necessary to overcome the practical difficulties imposed by compliance with the locational and setback restrictions of the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the addition of this proposed accessory structure/shed continues the residential use of the home, and is consistent with the goal of the Four Corners Master Plan to "preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods as the foundation of the community by assuring that new development, infill development, and special exception uses are compatible with the existing residential character."

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board is in receipt of three letters from confronting neighbors, supporting the grant of this variance. The Board notes the testimony of Mr. Rosenberg that he would have included a letter from his adjoining neighbor along Belton, but that gentleman has passed away. The Board further notes that per the Zoning Vicinity Map in the record at Exhibit 7, the house on the adjoining lot along Cavalier is angled away from the structure. Finally, the Board notes that Mr. Rosenberg consulted with each abutting neighbor and painted different sides of this structure/shed different colors, according to the neighbors' preference. See Exhibit 3(a). Thus the Board finds that granting the variance will not be adverse to the use and enjoyment of those properties.

Accordingly, the requested variance to allow an accessory structure/shed within 6.92 feet of the rear lot line is **granted**, subject to the following condition:

1. Petitioners shall be bound by the testimony of Mr. Rosenberg and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Bruce Goldensohn, with Carolyn J. Shawaker, Chair, in agreement, and Stanley B. Boyd and Edwin S. Rosado 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.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 12th day of February, 2016.


Barbara Jay
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. 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 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.