

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5573

PETITION OF LARRY BONANNO

(Hearing held May 2, 2001)

(Decision at Worksession held May 15, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, July 27 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(2)(c)(3) and 59-C-1.326(2)(b)(3). The petitioner proposes to construct a two-story garage that requires variances: of seven (7) feet as it is within two (2) feet of the side lot line and of seven (7) feet as it is within two (2) feet of the rear lot line. The required side lot line setback is nine (9) feet and the required rear lot line setback is nine (9) feet. The petitioner's initial request has been revised.

The subject property is Lot 3, Block 4, Randolph Hills Subdivision, located at 4812 Wilwyn Way, Rockville, Maryland, in the R-60 Zone (Tax Account No. 70387).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a two-story garage in the northeast corner of the property.
2. The petitioner testified that the rear yard has an angled boundary line that moves inward approximately 17 feet across the rear of the property as shown in Exhibit No. 4. The petitioner testified that the rear yard slopes downward and that any construction in the rear yard would require a retaining wall.
3. The petitioner testified that the proposed garage would replace an existing shed and that the site of the proposed garage would allow for an adequate turnaround area for a vehicle. The petitioner testified that the placement of the garage would prevent damage to an existing mature tree, as shown in Exhibits Nos. 11(a) and (b).
4. The petitioner testified that the garage could not be located elsewhere on the property and that if the garage were to be moved forward on the lot, it would obstruct the existing deck and patio that were built by the prior owner.
5. The petitioner testified that his neighbors support the variance request and several letters of support were entered in the record as Exhibit Nos. 13(a) through 13(d). The petitioner testified that the structure would have electricity, but would have no plumbing and that the garage would be similar to other improvements made in the neighborhood. See, Exhibit Nos. 12(a) and (b) and 13(a) through 13(d).

6. In a discussion of the variance request, the Board found that the lot's existing conditions were peculiar and unique, but that the proposed garage was not the minimum reasonably necessary. The structure, as proposed, would increase the bulk and mass on the lot and would be an overwhelming structure when viewed from the neighboring properties. The petitioner was given the option of proceeding with the public hearing or postponing a decision on the variance request until he could review his plans and submit a modification to his variance request.
7. The Board at its worksession held on May 15, 2001, considered a modification to the original variance request, which reduced the variances required from the side and rear lot line setbacks. See, Exhibit Nos. 14(d) and 14(e).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 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 property is an unusually shaped lot with an approximate 17-foot inward angle at the rear yard boundary. The Board finds that the angled rear lot line is an exceptional condition that is unique and peculiar to the property. Given these conditions, the Board finds that the strict application of these provisions would result in practical difficulty and an undue burden upon the property owner. Additionally, the Board finds that the siting of the proposed garage would preserve an existing mature tree also located in the rear yard.

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

The Board finds that the variances requested, as modified, for the construction of a one-story garage are the minimum reasonably necessary to overcome the exceptional conditions of the property.

- (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.*

The proposed construction would continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request. The record contains several letters of support and the Board finds that the proposed construction would not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of three (3) feet from the required five (5) foot side lot line setback and of three (3) feet from the required five (5) foot rear lot line setback for the construction of a one-story garage are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 14(d) through 14(h).

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.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 27th day of July, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of 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.