

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5593

PETITION OF MARTA A. FUENTES
(Hearing held May 23, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, August 24, 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-1.323(a)(2)(b)(4) and 59-C-1.323(a)(2)(c). The existing shed requires variances of 4.50 feet as it is within 3.50 feet of the rear lot line and of two (2) feet as it is within three (3) feet of the side lot line. The required rear lot line setback is eight (8) feet and the required side lot line setback is five (5) feet.

Mr. Perry, Ms. Fuentes' son-in-law, appeared as an interpreter for the petitioner and Marlon Pickles, an adjoining neighbor, also appeared at the public hearing in opposition to the variance request.

The subject property is Lot 2, Block 64, located at 12612 Dalewood Drive, Silver Spring, Maryland, in the R-60 Zone (Tax Account No. 273947611).

Decision of the Board: Requested variances for the existing shed **granted.**
Requested variances for the additions to the existing shed
denied.

EVIDENCE PRESENTED TO THE BOARD

1. The existing shed is located in the northern rear yard of the property, with additions added to the eastern and western sides of the existing shed.
2. The petitioner testified that she has owned the property for five years and that the shed was located on the property when it was purchased. See, Exhibit No. 5(a). The petitioner testified that the original shed was a two-story structure.
3. The petitioner testified that when the shed was repaired, additions were added to each end of the existing structure. The petitioner testified that the contractor that made the repairs stated that he did not know if a building permit was required in order to make the repairs. The petitioner testified that neither she, nor the contractor obtained a building permit for the repairs and modifications to the shed.
4. The petitioner testified that the additions to the existing shed were to provide additional family storage.

5. Mr. Pickles testified that the original structure was built by the prior owner and that the shed was built in either 1988 or 1989. Mr. Pickles testified that he did not believe that the prior owner received a permit to construct the shed.
6. Mr. Pickles testified that the existing shed is a very imposing structure and that he is requesting that the setback requirements be enforced because the shed is taller than existing garages in the neighborhood and that the structure takes away the openness of the neighborhood.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances for the existing shed can be granted. The requested variances comply with the applicable 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 applications 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.*
- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

1. The original shed was built by the prior owner and has existed on the property for approximately twelve years. The Board finds that this is an exceptional circumstance. The Board notes that this finding would be consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than three years. The Board notes, however, that the State policy is conditioned on the issuance of a valid building permit.
2. The Board also observes that the shed has existed on the property without complaints or concerns expressed by the neighboring property owners for the last 12 years.
3. Further, the Board finds that based on the evidence of record that the variance is the minimum reasonably necessary; the shed will not impair the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan; and that due to the long-time existence of the shed, it has not been and will not be detrimental the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 4.50 feet from the required eight (8) foot rear lot line setback and of two (2) feet from the required five (5) foot side lot line setback for the existing shed are granted.

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances for the additions to the existing shed must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) and (b) 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 while it is very unfortunate that the petitioner relied on a contractor that built the additions to the existing shed without the necessary building permit, had the contractor received a building permit, the required setbacks would have been known. The Board finds that no exceptional or extraordinary topographical or other conditions exist that are unique and peculiar to the property.

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

The Board finds that the additions to the existing shed add bulk and mass to the shed and that the shed with the additions is of out character with other structures in the neighborhood.

Since the petition does not meet the requirements of Section 59-G-1.3(a) and (b), the Board finds that it does not need to consider the other requirements for granting a variance. Accordingly, the requested variances for the additions to the existing shed of 4.50 feet from the required eight (8) foot rear lot line setback and of two (2) feet from the required five (5) foot side lot line setback are denied.

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 Donna L. Barron, seconded by Mindy Pittell Hurwitz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Louise L. Mayer 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 24th day of August, 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

