

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5653

PETITION OF MARK AND MICHELLE MONTEFERANTE

(Hearing held October 10, 2001)
(Decision at Worksession held November 28, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, January 31, 2002)

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 a variance from Section 59-C-1.326(b)(2). The petitioners propose to construct an accessory structure (garage) that requires a 9.80 foot variance as it is within 2.20 feet of the rear lot line. The required setback is twelve (12) feet.

Greg Weidemann, the petitioner's architect, appeared with Mr. Monteferante at the public hearing.

The subject property is Lot 23, Block B, Potomac Hills Subdivision, located at 10100 South Glen Road, Potomac, Maryland, in the R-60 Zone (Tax Account No. 1051866771).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 12 x 30.5 foot accessory structure/garage, which would consist of a one-car garage, a pool changing room and a porch.
2. Mr. Weidemann testified that the original property was subdivided into 4 lots (Lots 21, 22, 23 and 24) and that the petitioner's lot was one of the four lots created. Mr. Weidemann testified that the four lots share an easement that provides a common access to the lots from South Glen Road.
3. Mr. Weidemann testified that the property is a corner lot located at the intersection of Gary Road and South Glen Road. Mr. Weidemann testified that Gary Road is a paper street and that no access to Gary Road is available from the four properties.
4. Mr. Weidemann testified that the Department of Permitting Services (DPS) designated the petitioner's rear yard as the front yard and the side yard as the rear yard. Mr. Weidemann testified that the subdivision of the original property created a shallow rear yard on the subject property and that the proposed garage would be located in the rear yard.

5. Mr. Weidemann testified that the garage would be built on an existing parking pad and would extend into the easement. In response to questions from the Board, Mr. Weidemann stated that the property does have an attached two-car garage.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a), (b) and (d) 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 petitioner's lot has no peculiar topographical or other conditions that impact the property. The Board further finds that the existing conditions of the property do not prevent construction in other areas of the lot.

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

The Board finds that the property has on-site parking and that the additional accessory structure/garage is not the minimum reasonably necessary.

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

The proposed garage would be constructed in a commonly shared easement area and the Board does not know what future impact the structure, located in the easement, may have on the use and enjoyment at the neighboring properties.

The petition does not meet the requirements set forth in Section 59-G-1.3(a), (b) and (d) for the grant of a variance. Accordingly, the requested variance of 9.80 feet from the required twelve (12) foot rear lot line setback for the construction of an accessory structure (garage) is 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 Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, in agreement, and Donald H. Spence, Jr., Chairman, abstaining, the Board adopted the foregoing

Resolution. Board member Angelo M. Caputo 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 31st day of January, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

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.