

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. A-5888

PETITION OF GUSTAVO L. BESSALEL

(Hearing held June 4, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, August 12, 2003)

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-1.323(a). The petitioner proposes to construct a garage addition that requires a 2.60 foot variance as it is within 22.40 feet of the front lot line. The required setback is twenty-five (25) foot.

The subject property is Lot 8, Block 10, Sumner Subdivision, located at 5107 Lawton Drive, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00610860).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a two-car garage addition.
2. The petitioner testified that his property is an unusually shaped lot. The petitioner testified that the property is located on a cul-de-sac and that the front of his lot curves inward to follow the road. The petitioner testified that the proposed garage would replace the existing garage and that the lot is 11,000 square feet.

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) 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 while the petitioner's lot has a distinctive shape, the petitioner's lot is similar to other properties in the immediate neighborhood and that the lot has no exceptional topographical or other conditions peculiar to the property. The petitioner's lot exceeds the minimum lot size for the zone. See, Exhibit No. 8 (zoning vicinity map).

The Board finds that the location of the petitioner's residence creates the need for the variance and that the siting of the residence is not a zoning reason for the grant of a variance. The petitioner's evidence established that the need is based on personal convenience only.

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

The construction, as proposed, would substantially increase the size of the residence and the Board finds that the requested variance for the construction of a garage addition is not the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 2.60 feet from the required twenty-five (25) foot front lot line setback for the construction of a garage addition is denied.

The Board adopted the following Resolution:

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donald H. Spence, Jr., Chairman, in agreement, and Angelo M. Caputo, in opposition, 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.

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 12th day of August, 2003.

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.