

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5935

PETITION OF BECKY SUE AND JOHN R. SISSON
(Hearing held November 12, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, January 9, 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-9.45. The petitioners propose to construct an accessory structure (detached garage) in the side yard. Section 59-C-9.45 requires that accessory structures are to be located in the rear yard only.

The subject property is Lot 33, Block F, Brookeville Subdivision, located at 2509 Brown Farm Court, Brookeville, Maryland, 20833, in the RC Zone (Tax Account No. 03297754).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 30 x 36 foot detached garage in the southern side yard.
2. The petitioners testified that the property is an oddly shaped lot in the Patuxent River Watershed District. The petitioners testified that the development of their subdivision is governed by Executive Regulation No. 28-93AM. Executive Regulation No. 28-93A states that "Single family dwellings require no less than 10,000 square feet which includes an initial absorption area . . . In the Patuxent River Watershed a minimum of 17,000 square feet of useable area for each 500 gallons of flow per day is required for the absorption area." See, Exhibit No. 13 (Executive Regulation No. 28-93AM, pgs 26-27). The petitioners testified that their rear yard is the property's absorption area.
3. The petitioners testified that the conservation easement severely restricts the property's buildable area and that new construction could not be located elsewhere on the lot. See, Exhibit Nos. 4(a) and 4(b) [survey plat and site plan]. The petitioners testified that the because of their location in the

subdivision, the proposed structure would be visible to only two other homes in the immediate neighborhood.

FINDINGS OF THE BOARD

Based on the petitioners' 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-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 petitioners' rear yard is used as a water absorption area for the property to meet a conservation easement requirement. The easement requirement severely restricts the lot's buildable area. The Board finds that this is an exceptional circumstance peculiar to the property and that strict application of the regulations would result in practical difficulties for the property owners.

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

The Board finds that the variance request for the construction of an accessory structure/detached garage is the minimum reasonably necessary.

(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 Board finds that the proposed construction will continue the residential use of the property and the variance 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 Board finds that the proposed structure will not significantly impact the view from the homes in the immediate area and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance to permit the construction of an accessory structure/detached garage in the side yard is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, 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. 4(a) and 4(b) and 5(a) through 5(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing 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 9th day of January, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) 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.

