

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6141**

**PETITION OF JOHN R. AND SUZANNE PRANZATELLI**

(Hearing held June 14, 2006)

**OPINION OF THE BOARD**

(Effective date of Opinion, September 7, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Montgomery County Code 1994, as amended) for variances from Sections 59-C-1.326(a)(2)(C) and 59-C-1.326(a)(2)(B). The petitioners propose the construction of an accessory structure/detached garage that requires a variance of three (3) feet as it is within two (2) feet of the side lot line and a variance of three (3) feet as it is within two (2) feet of the rear lot line. The required side lot line setback is five (5) feet and the required rear lot line setback is five (5) feet.

Frank Abbott, the adjoining neighbor on Lot 3, appeared with the petitioner at the public hearing.

The subject property is Lot 2, Block 1, Otterbourne Subdivision, located at 3602 Thornapple Street, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00527920).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners proposed the construction of a 14 x 20.8 foot detached garage.
2. The petitioner testified that his property shares a driveway with the property that adjoins his lot to the west and that when the properties in the neighborhood were originally developed, shared driveways were installed with either parking pads or garages built at the end of the driveways. The petitioner testified that the existing parking pads or garages were set within 5 feet of the boundaries of the properties, with the shared driveway installed between the two lots. The petitioner testified that the shared driveway is covered under an easement. See Exhibit No. 4

3. Mr. Abbott testified that Lots 2 and 3 have a private easement that was established in the 1960 prior to ownership by the petitioner. Mr. Abbott testified that the easement provides for 7 feet of space on each of the lots for a mutually shared driveway. Mr. Abbott testified that this characteristic is unique to the two properties and that no other properties within three blocks of their lots share this characteristic. Mr. Abbott testified that detached garages are a typical characteristic of the neighborhood and that a large portion of the properties in the neighborhood have detached garages.
4. The petitioner testified that the unique aspect of his property is the historical evolution of the shared driveway. The petitioner testified that properties on his street have detached garages which are located in the rear yard, and that those structures are located in the rear and side yard setbacks. The petitioner testified that siting a garage 5 feet in either the front or the side yards would create difficulty in either entering or leaving the structure. The petitioner testified that the subject property has an existing gravel parking pad and that the proposed structure would be consistent in design with other structures in the neighborhood.

### **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 Board finds that the subject property has a private easement that was established prior to the ownership of the property by the petitioners for the benefit of a shared driveway, which encumbers 7 feet of space on each of Lots 2 and 3 of Block 1. The Board finds that no other properties in the petitioner's immediate neighborhood have similar easements on the properties, and that Lots 2 and 3 of Block 1, are the only lots in the immediate area that have this characteristic. The Board finds that this is an exceptional circumstance peculiar to the subject property and that the strict application of the zoning ordinance would result in

practical difficulties to and an undue hardship upon the property owners.

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

The Board finds that the variances requested for the construction of an accessory structure/detached garage are 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 that 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 Board finds that the proposed construction will not be out of character with other improvements in the neighborhood and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring 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 an accessory structure/detached garage are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5.

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 Angelo M. Caputo, seconded by Wendell M. Holloway, with Donna L. Barron, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, 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 7th day of September, 2006.

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Katherine Freeman  
Executive Director

**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.

