

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6143

APPEAL OF MAHDI IMAN HUSCHMAND

OPINION OF THE BOARD

(Hearing held February 21, 2007)

(Effective Date of Opinion: December 18, 2007)

Case No. A-6143 is an administrative appeal filed by Mahdi Iman Huschmand in which he charges administrative error by the County's Department of Permitting Services (DPS) in issuing a Notice of Violation, dated April 18, 2006, for the installation of an accessory structure in the front yard of the property located at 4601 Hunt Avenue, Chevy Chase, Maryland 20815.

Pursuant to Section 59-A-4.4 of the Montgomery County Zoning Ordinance, Codified as Chapter 59 of the Montgomery County Code (the "Zoning Ordinance"), the Board held a public hearing on the Appeal on February 21, 2007. Associate County Attorney Malcolm F. Spicer, Jr., appeared on behalf of DPS. He called Frank De Lange, a Zoning Investigator for DPS, as a witness. Norman Knopf, Esquire, appeared on behalf of Abigail Moss, Erica and Andrew Brown and Diane and William Canter, adjacent and neighboring property owners who intervened in the appeal. Mr. Huschmand appeared on his own behalf.

Decision of the Board: Administrative appeal **denied**.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. The subject property is Lot PT 35 and PT 36, located at 4601 Hunt Avenue, Chevy Chase, Maryland, 20815, in the R-60 Zone. Mr. Huschmand is the owner of the subject property.
2. Case No. A-6143 was originally consolidated with another administrative appeal pertaining to the same property, Case A-6178, Appeal of Celesta

Jurkovich, in which the appellant charged administrative error on the part of the Department of Permitting Services in its issuance of Home Occupation Certificate No. 248443 dated September 7, 2006, issued to Mahdi Iman Huschmand. By Resolution dated May 15, 2007, the Board of Appeals dismissed Case No. A-6178 as moot when Mr. Huschmand requested that Home Occupation Certificate 248443 be revoked, and DPS, in a letter dated March 26, 2007, from Reginald Jetter, revoked the certificate.

3. On April 18, 2006, the Department of Permitting Services issued a Notice of Violation to Mahdi Iman Huschmand, for having an accessory structure in his front yard.¹ The Notice required that the property owner either remove the structure or the cover over it, so that it would become a pergola or trellis, which would be permitted.
4. Frank De Lange, an Investigator with DPS, testified that he had issued the Notice of Violation. Mr. De Lange offered photographs of the structure, which were entered into the record as Exhibit Nos. 20 (A & B). Mr. De Lange cited the definition of structure contained in Section 59-A-2.1 of the Zoning Ordinance:

An assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and television broadcasting towers, telecommunications facilities, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.

In response to questions, Mr. De Lange clarified that the structure is set in a concrete pad, and therefore not temporary, that the umbrella component of the structure is considered a partial roof, which shows it is intended for occupancy. Mr. De Lange further stated that in his opinion, without the umbrella, or roof, the structure could be considered a decorative feature. The dimensions of the structure are about 4' by 4' by perhaps 7 feet high.

5. Mr. Huschmand testified that the structure is not permanent, that it is not imbedded into the concrete and is thus moveable. He offered a picture to illustrate this, which the Board accepted as Exhibit No. 21. He testified that his sister, a designer, designed the structure and that the umbrella can be detached and entirely removed from the structure. Mr. Huschmand stated that he intended to order a different item, an awning, but mistakenly ordered the structure in issue, and could not return it, and that he does not have room to put it in his back yard.

¹ Section 59-C-1.326 requires that "An accessory building or structure must be located in the rear yard and must not occupy more than 20 percent of the rear yard."

Mr. Huschmand stated that though he originally intended to use the structure like a patio, he did not realize that this would not be permitted and that he now would like to have the structure considered a decorative element. In response to a Board question, Mr. Huschmand stated that the dimensions of the structure are about 7 by seven feet by 7 and one-half feet high.

6. On cross examination, Mr. Knopf asked Mr. Huschmand whether a circus tent, which falls within the definition of a structure in Section 59-A-2.1 of the Zoning Ordinance, is a temporary structure. Mr. Knopf also asked Mr. Huschmand whether the use intended for the structure in issue was as part of his home occupation for furniture sales, which Mr. Huschmand denied. In response to a Board question, Mr. Knopf went on to say that the structure is intended for a use, within the definition, rather than being decorative.
7. Andrew Brown, of 4609 Hunt Avenue, stated that although Mr. Huschmand states in his appeal application that he "...spent over \$3000 for this umbrella holder and...would like to be able to cover myself from the sun when I sit on my outdoor furniture. I have a scar on my face which cannot be exposed to sun," that he, Mr. Brown, has never seen anyone sitting under the umbrella. He further stated that one of his neighbors has seen Mr. Huschmand working without sun protection in his yard. [Transcript, February 21, 2007, p. 50].

CONCLUSIONS OF LAW

1. Section 8-23 of the Montgomery County Code authorizes any person aggrieved by the issuance, denial, renewal, or revocation of a permit or any other decision or order of DPS to appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, or revoked, or the order or decision is issued. Section 59-A-4.3(e) of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*.
2. Section 59-C-1.326(a)(1) of the Zoning Ordinance states that accessory buildings and structures can be located in the rear yard only.
3. The Board finds that the structure in issue, as described in the testimony and depicted in the photographic evidence, falls within the limits of the Zoning Ordinance definition of a structure. The County's definition of structure comprehends both temporary and permanent structures. Mr. Huschmand testified that he originally intended to use the structure as a patio, which the Board finds supportive of its conclusion that, irrespective of its present (presumably decorative) use, this assembly of materials was intended for occupancy or use, and thus meets the definition of structure set forth in the Zoning Ordinance. As such, it is subject to the locational requirements of Section 59-C-1.326(a)(1).

4. Therefore, the Board finds that the Notice of Violation dated April 18, 2006, which cited the Appellant for having an accessory structure in the front yard, in violation of Section 59-C-1.326 of the Zoning Ordinance was properly issued.
5. The appeal in Case A-6143 is **Denied**.

On a motion by Catherine G. Titus, seconded by Caryn L. Hines, with Donna L. Barron, Vice-Chair, Wendell M. Holloway, and Allison Ishihara Fultz, Chair in agreement the Board voted unanimously to deny the appeal and 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.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of December, 2007.

Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date 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.