

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. A-6422

PETITION OF HARVEY AND SELMA SWEETBAUM

OPINION OF THE BOARD

(Opinion Adopted December 4, 2013)
(Effective Date of Opinion: February 12, 2014)

Case No. A-6422 is an application for variances to construct a one-story addition. The proposed construction requires an eleven-foot variance as it is within one foot of the side lot line. The required setback is twelve (12) feet, in accordance with Sections 59-C-1.323(b)(1). The proposed construction also reduces the sum of both side yards to fourteen (14) feet, and requires a variance of eleven (11) feet. The required sum of both side yards is twenty-five (25) feet, in accordance with Section 59-C-1.323(b)(1).

The Board of Appeals held a hearing on the application on December 4, 2013. Harvey and Selma Sweetbaum appeared and gave testimony.

Decision of the Board: Requested Variances Granted.

EVIDENCE PRESENTED

1. The subject property is Lot 40, Block E, North Springbrook SE C2 Subdivision, located at 12605 Pentenville Road, Silver Spring, Maryland, 20904, in the R-200 Zone.

2. The Petitioners have lived in their home for 50 years and are now in their eighties. The requested variances are for a car port that they constructed next to their garage to have a parking space that is protected from the elements. It is increasingly difficult for them to remove snow or ice from an uncovered parking space.

The Petitioners testified that their lot is narrow at the front, and that it slopes steeply to the rear, so that it would not be possible to construct a carport to the rear of the house. [See also Exhibit Nos. 3 and 3a].

FINDINGS OF THE BOARD

Under Section 59-G-3.1. of the Zoning Ordinance, the Board of Appeals may grant petitions for variances, as authorized in Section 59-A-4.11(b), upon proof by a preponderance of the evidence that:

- (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 property's steep topography and narrow frontage combine to create a condition that is unique to this property which precludes construction of a carport elsewhere on the lot.

The Board further finds that the strict application of the side and sum of both side setbacks would therefore prevent the Petitioners from constructing a carport anywhere on the lot, posing a practical difficulty for the Petitioners.

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

The Board finds that the requested variances of eleven feet from the side setback and from the sum of both sides setback, to allow construction of the carport next to the garage, is the minimum reasonably necessary to overcome the lot's narrow frontage and steep slope.

- (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; and

The Board finds that construction of the carport continues the single family residential use of the home, furthering the intent, purpose and integrity of the general plan and the approved and adopted area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. These provisions, however, shall not permit the board to grant any variance to any setback or yard requirements for property zoned for commercial or industrial purposes when such property abuts or immediately adjoins any property zoned for residential purposes unless such residential property is proposed for commercial or industrial use

on an adopted master plan. These provisions shall not be construed to permit the board, under the guise of a variance to authorize a use of land not otherwise permitted.

The Board finds that construction of the carport, which is screened from the abutting property by a fence and buffered by existing mature trees will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Accordingly the requested variances of eleven feet from the side lot line setback and eleven feet from the sum of both side setbacks are granted subject to the following conditions:

1. The Applicants shall be bound by their testimony and exhibits of record to the extent that such evidence and testimony are identified in this opinion.
2. Construction must be completed according to the plans entered in the record as Exhibit Nos. 4 and 5(a-g).

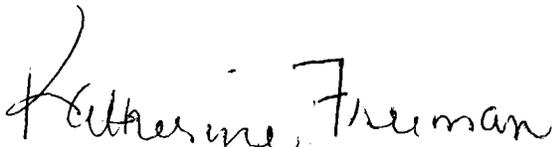
On a motion by Stanley B. Boyd, seconded by John H. Pentecost, with Carolyn J. Shawaker and David K. Perdue, Vice-Chair, in agreement and Catherine G. Titus, Chair, necessarily not participating:

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.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of February, 2014.



Katherine Freeman
Executive Director

NOTE:

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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.