

**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](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. A-6453**

**PETITION OF ALFRED DZENKOWSKI**

OPINION OF THE BOARD

(Opinion Adopted February 18, 2015)  
(Effective Date of Opinion: March 18, 2015)

Case No. A-6453 is an application for a variance from the requirement in Section 59-4.4.4.B.2.c of the Zoning Ordinance that accessory structures be located in the rear yard only. The Petitioner proposes to construct a detached garage in the side yard.

The Board of Appeals held a hearing on the application on February 18, 2015. Alfred Dzenkowski appeared and testified.

Decision of the Board: Requested Variance **Granted**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 26, Block H, Silver Crest Subdivision, located at 24356 Hilton Place, Gaithersburg, Maryland, 20882, in the RE-2 Zone. The subject property contains 87,120 square feet. The Petitioner and his wife purchased the subject property in August, 2013. [Transcript, February 18, 2015, p. 4].
2. The Petitioner proposes to build a detached, 24-foot by 26-foot garage in the side yard, just north of the end of his existing asphalt driveway. The Petitioner and his wife are both police officers, so they have two police cars and two private vehicles.
3. The subject property is a wedge-shaped lot with a curved front lot line. A large area of the rear yard, north of the house, is occupied by the Approved Septic Area. The holding tank for the septic system is located just west of the end of the

existing driveway. A waste line connects the house and the septic system, running from the northwest corner of the house to holding tank and to the septic field. A water line running from the southwest corner of the house connects the house and the well. [See Exhibit 4(b)].

4. Mr. Dzenkowski testified that when he inquired about permits to build a garage, he learned that there is a ten-foot building restriction area around the Approved Septic Area. [Transcript, February 18, 2015, p. 8]. He testified that Well and Septic informed him that he cannot install a driveway over either the waste line or the water line. [Transcript, p. 9].

5. In response to a Board question, Mr. Dzenkowski stated that due to the property's topography, it would not be feasible to move the waste line to the west in order to have greater access to the rear yard. [Transcript, p. 16].

6. Mr. Dzenkowski testified that two other neighbors have garages similar to what he proposes. [Transcript, p. 24]. He stated that 20 percent of the neighborhood has detached structures. [Transcript, p. 27].

## **FINDINGS OF THE BOARD**

Based on the petitioner's 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 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that the building restriction area around the large septic field in the property's rear yard, and the Well and Septic Division's proscription against driving over the water line to the south of the house or the waste line to the north of the house, combine to prevent access to the rear yard. This constitutes an extraordinary condition that is peculiar to this property.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the conditions restricting access to his rear yard pre-date the Petitioner's ownership of the property, and are not attributable to him.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that because of the placement of the septic system and the water line for the home, an extraordinary condition of the property, the Petitioner has no driving access to the rear yard, which creates a practical difficulty for him in locating a detached garage. The Board finds that a variance allowing him to place the proposed detached garage in the side yard, adjacent to the existing driveway is the minimum reasonably necessary to overcome this practical difficulty.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to have a detached garage is entirely consistent with the residential uses contemplated for the neighborhood by the master plan. The Petitioner testified that a number of other homes have detached accessory structures, several of them in the side yard.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board can find no evidence that the proposed detached garage will be adverse to the use and enjoyment of abutting and confronting properties. It will be well set back from the front of the property and from adjoining properties on either side. There are existing mature trees and shrubs that will buffer its visibility. [See Exhibit Nos. 4(c) – 4(f)].

Accordingly, the requested variance to allow construction of a detached garage in the side yard is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be according to Exhibit Nos. 4(a) and (b) and 5(a) and (b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, seconded by Edwin S. Rosado, with Stanley B. Boyd, Carolyn J. Shawaker, Vice-Chair, and David K. Perdue, Chair, in agreement, the Board adopted the following Resolution:

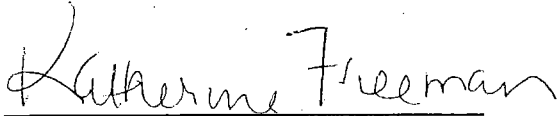
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



---

David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 18<sup>th</sup> day of March, 2015.



Katherine Freeman  
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.

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.