

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6462

PETITION OF ROBIN AND FLORIAN KOGELNIK

OPINION OF THE BOARD

(Public Hearing Date: May 6, 2015)
(Effective Date of Opinion: May 29, 2015)

Case No. A-6462 is an application for variances by Robin and Florian Kogelnik for placement of a shed 2.5 feet from the side lot line and 1.5 feet from the rear lot line. Section 59-4.4.9.B.2 requires this shed to be set back 5 feet from the side lot line and 5 feet from the rear lot line.

The Board of Appeals held a hearing on the application on May 6, 2015. Soo Lee-Cho, Esquire appeared on behalf of the Applicants. Robin Kogelnik testified in support of the application. Deborah Beers, Mayor of the Town of Glen Echo also testified.

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

EVIDENCE PRESENTED

1. The subject property is Lot 13, Block 23, National Chatauqua of Glen Echo Subdivision, located at 6100 Princeton Avenue, Glen Echo, Maryland, 20812, in the R-60 Zone.
2. Robin Kogelnik testified that the Applicants purchased the subject property and then-existing house in 2002, intending to renovate the house. She testified that they eventually discovered that the condition of the house made it impossible to renovate, so they razed the house and replaced it with a new house that meets the current setback standards for the zone.

3. Ms. Kogelnik testified that they replaced the former 10-foot by 20-foot garage with a 6-foot by 10-foot shed. The old garage was located on the rear (northeast) lot line and about 2.4 feet from the side (northwest) lot line. [Exhibit No. 3]. The new shed, for which the variances are requested, is 2.5 feet from the side lot line and 1.5 feet from the rear lot line. [Exhibit Nos. 3, 4].

4. Ms. Kogelnik testified that the proposed location for the new shed "conforms to how people put their sheds in Glen Echo," and that "a lot of them...are right on the [property] line." [See Exhibit No. 3(D)].

5. The record contains letters of support from the owners of the three properties that about the subject property. [Exhibit No. 9].

6. Deborah Beers testified that a lot of the sheds in Glen Echo are non-conforming. Ms. Beers stated that the Town is taking no position on the variance application. She expressed the Town's support for requiring issuance of a Building Permit Denial by the Department of Permitting Services as a prerequisite to a variance application. Ms. Beers stated that when a Building Permit Denial is issued, the Town receives notice of it, which affords the Town more notice of potential variance applications, and a more reasonable time period in which the Town can consider the permit and possible variance application and formulate its own position.

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 59-7.3.2.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.v – the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood

Based upon Ms. Kogelnik's testimony, and Ms. Beers' testimony, and on Exhibit No. 3(D), the Board finds that the proposed shed substantially conforms with the established pattern for placement of sheds in this neighborhood.

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 established pattern for placement of sheds in the neighborhood is not the result of any action by the Applicants.

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 the variances are minimal, and that they place the new shed farther from the property lines than the old garage.

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 the proposed 6-foot by 10-foot shed, which replaces a former, larger garage and conforms with the pattern of placement of sheds in the neighborhood, is consistent with the residential uses contemplated in the master plan and will not impair the master plan at all.

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 finds that the proposed 6-foot by 10-foot shed, which replaces a former, larger garage and conforms with the pattern of placement of sheds in the neighborhood will not infringe on the use and enjoyment of abutting or confronting properties. The replacement shed encroaches less than the former structure into the setbacks. The record contains letters from all three abutting property owners in support of the variances.

Accordingly, the requested variances to allow placement of a shed in the back yard are **granted**, subject to the following conditions:

1. Petitioner shall be bound by her testimony, the statements of her attorney 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. 3 (A)-(D), and 4.

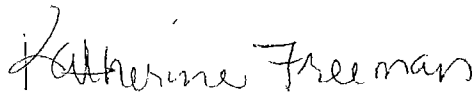
Therefore, based upon the foregoing, on a motion by John H. Pentecost, seconded by Edwin S. Rosado, with Stanley B. Boyd, Carolyn J. Shawaker, Vice-Chair, and David K. Perdue, Chair, in agreement, the Board adopted the following Resolution:

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 29th day of May, 2015.



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.