

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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(240) 777-6600

**Case No. A-6471**

**PETITION OF ROBERT W. KINZIE**

**OPINION OF THE BOARD**

(Public Hearing Date: July 29, 2015)

(Effective Date of Opinion: August 28, 2015)

Case No. A-6471 is an application by Robert W. Kinzie for variances from Sections 59-3.7.4.A.1 and 59-4.4.7.B.2(a) of the Zoning Ordinance to allow an accessory structure in the front yard of a lot without a principal building.

The Board of Appeals held a hearing on the application on Wednesday, July 29, 2015. Charles Jamison, Esquire, appeared on behalf of Robert Kinzie. Mr. Kinzie testified in support of the application. There were no other parties. The record contains three letters in support of the variance.

Decision of the Board: Requested variances granted.

**EVIDENCE PRESENTED**

1. The subject property is Parcel P512, Sugarland Farm Preliminary Plan Subdivision located at 14400 Sugarland Lane, Poolesville, Maryland, 20837, in the R-200 Zone.
2. The subject property is one of four contiguous parcels that Mr. Kinzie purchased and which are being re-subdivided into two lots. Mr. Kinzie cleaned up the properties after their use for illegal dumping. These efforts included cleaning and renovation of the building referred to as the Accessory Structure in this application, which will be located on Lot 2 of the re-subdivided property. Mr. Kinzie also intends to build a principal building on Lot 2.
3. The Planning Board Resolution for Preliminary Plan 120130140 for this subdivision requires that, prior to issuance of a building permit, the Accessory Structure be non-

habitable, and that Mr. Kinzie obtain any necessary variances for the structure's location. [Exhibit No 10].

4. Lot 2 comprises approximately 21.89 acres. It is located beyond the end of Sugarland Lane, and has very limited road frontage. Mr. Kinzie will extend Sugarland Lane, per the preliminary plan for the subdivision, to access Lot 2.

5. The Applicant's Statement explains that: Lot 2 is an unusually shaped, five sided lot, and that "The Accessory Structure will be located almost 1000 feet behind the rear building line (as that term would be understood by a lay person) of the principal building...however because of the unique topography and layout of Lot 2, the Accessory Structure is situated between the principal building and the end of Sugarland Lane." "The Accessory Structure is surrounded by trees and cannot be seen from any other residence;" and "Lot 2 will be 21.89 +/- acres, larger than any other property in the immediate neighborhood that is zoned R-200. [Exhibit 3, pp. 3-4].

6. In response to questions from Mr. Jamison, Mr. Kinzie testified that the nearest neighbor to Lot 2 is "About 700 feet as the crow flies." [Transcript, July 29, 2015, p. 8]. Mr. Kinzie also testified that the Accessory Structure cannot be seen from off of the property. He testified that Lot 2 will have 25 feet of road access to Sugarland Lane, created as part of the subdivision process, and no other road frontage. Mr. Kinzie testified that there can be no construction behind the rear building line (as determined by the Department of Permitting Services) of the subject property because of the presence of the sand mounds for the septic system. He testified that there is a forest conservation easement to the south of the building site, and "very rugged terrain" [Transcript, p. 17]. Mr. Kinzie concurred that the applicable master plan is the Agricultural and Rural Open Space Master Plan, which "recommends preserving critical masses of farmland and rural open space." He further concurred that the Planning Board's conditional approval of his Preliminary Plan shows their tacit acceptance that the requested variance for his Accessory Structure is consistent with the Master Plan. [Transcript, p. 20].

7. In response to Board questions, Mr. Kinzie testified that the proposed location for the principal building is in the only area on the lot that is not covered by the forest conservation easement; and that "every house on Sugarland and, basically, every rural house in that area has a barn, a stable, a shed, some place to store their tractor..." and "Innumerable" agricultural buildings, and that they are generally lawful. [Transcript, p. 21].

## **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:

*Section 59.7.3.2.E.2 each of the following apply:*

*Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

1. *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 property is unusually shaped and that construction is uniquely constrained on the property by the combined presence of a large forest conservation easement, severe topography, and its septic system. It is also unusual in that it is situated where Sugarland Lane ends, and has very little road frontage.

2. *Section 59.7.3.2.E.2.a.iii the proposed development contains environmentally sensitive features or buffers;*

There is a large forest conservation easement that limits the buildable area on the property.

3. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

None of the conditions that constrain construction on the site are the result of actions by Mr. Kinzie. The Accessory Structure was existing when he purchased the property.

4. *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 allowing the Accessory Structure to remain in its current location, not visible from off of the property, is the minimum variance necessary. Mr. Kinzie has demonstrated that he could not locate an accessory structure anywhere else on the lot without also needing a variance.

5. *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 subject property, at nearly 22 acres, fulfills the master plan goal of preserving agricultural and rural open space, and that the presence of the Accessory Structure, not visible from off the site, in no way impairs the intent or integrity of either the general master plan or of the Agricultural and Rural Open Space Master Plan.

6. *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 Accessory Structure will have no impact on abutting or confronting properties. The property's nearest neighbor is 700 feet away, and the structure cannot be seen from off of the property.

Therefore, based upon the foregoing, on a motion by David K. Perdue, Chair, seconded by Carolyn J. Shawaker, Vice-Chair, with Stanley B. Boyd and Edwin S.

Rosado in agreement, and John H. Pentecost necessarily absent, the Board adopted the following Resolution:

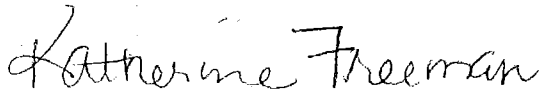
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28<sup>th</sup> day of August, 2015.



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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.