

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6492

PETITION OF CECILE' BENIGNI AND DAVID A. BENIGNI

OPINION OF THE BOARD

(Opinion Adopted April 27, 2016)
(Effective Date of Opinion: May 5, 2016)

Case No. A-6492 is an application for a variance to allow the construction of an accessory structure (greenhouse) in front of a single family dwelling. Section 59-4.3.4.B.2.d of the Montgomery County Zoning Ordinance requires accessory structures to be located in the rear yard only ("behind the rear building line of the principal building").

The Board of Appeals held a hearing on the application on April 27, 2016. Petitioner Cecile' Benigni appeared at the hearing pro se.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 5, Meadow View Subdivision located at 1813 Gold Mine Road, Brookeville, Maryland, 20833, in the RC Zone. Ms. Benigni proposes to locate what she describes as a 150 square foot "hobby" greenhouse, for personal and not commercial use, in front of her single family home.
2. Ms. Benigni testified that the subject property is approximately 5 acres in size, with a long pipestem driveway. She notes in the power point that she prepared (Exhibit 10) that the site where she proposes to locate the greenhouse is over 700 feet from the road and is not visible from the road. See Exhibit 10, page 5. She testified that she lives in a brick ranch-style house, which is also not visible from the road. She testified that her septic field is located in her front yard, and her well is located in her back yard. She explained that the minimum setback for detached structures with no living space from a well is 30 feet, and stated that compliance with such a setback would put her greenhouse either in her home or in the large forest behind her home. See Exhibit 10, pp. 6-7.

3. Ms. Benigni testified that the forest behind her home has trees over 24" in diameter. She presented an exhibit showing the forest canopy surrounding her house, noted that the Olney Master Plan refers to the forest behind her home as a "high priority forest," and testified that the Master Plan relies on the "awareness and stewardship of the landowner" to protect its green infrastructure. See Exhibit 10, pages 11-15. She then noted that the two things a greenhouse needs are sun and water, and that she would have to remove a number of trees from this forest to allow for adequate light if she were to locate the greenhouse in her rear yard, at a proper distance from her well. See Exhibit 10, page 15 (tree canopy viewer showing what would have to be removed). She testified that if she were to disturb 5,000 square feet of forest, it would trigger forest conservation requirements.
4. Ms. Benigni testified that her property is severely sloped, with grades ranging from 15% to 21%. She testified that the previous owner had created two level areas – one for a pool, which necessitated the construction of a 16 foot retaining wall, and the other for a shed. She testified that the pool area and the well are the only level areas in her rear yard that are close to a source of water. She noted that there is one other area, down by the creek, which is relatively level, but lacks access to running water and is very wet.
5. Ms. Benigni testified that the area in which she proposes to locate the greenhouse is relatively level, and is outside of the restricted area around her septic field. She testified that such placement would position the greenhouse so that it was behind the homes that front on Gold Mine Road (i.e. lots 1-4) because of the pipestem nature of her property. See Exhibit 8(a). In addition, Ms. Benigni testified that she has a letter from the neighbor who would be most affected (i.e. the neighbor who owns the house on lot 6, also a pipestem), supporting the grant of her variance. See Exhibit 7.

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

Based upon Ms. Benigni's testimony and Exhibit Nos. 8(b), 8(c), and 10, the Board finds that the subject property is severely sloped, limiting the available areas for construction. In addition, the Board finds that the rear yard of the subject property is also constrained by the presence of a well, which requires a 30 foot setback in all directions. See Exhibit 10, pp. 6-7. Finally, the Board notes that the rear yard of this property contains what the Olney Master Plan has termed "high priority forest," which would have to be significantly disturbed if the proposed accessory structure were to be located behind

the rear building line of the principal building, in order to allow adequate sunlight to the structure. See Exhibit 10.

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

The Benignis did not create the severe slopes or high priority forest which encumber this property. In addition, the Benignis are not the original owners of this property, and are not responsible for the location of the well behind the house (or the septic field in front of the house).

3. *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 requested variance, to allow the placement of the proposed accessory structure on a level, non-forested portion of this property that is in front of the house instead of behind its rear building line, is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose. The Board notes that even with the grant of this variance, the proposed accessory structure would not be visible from the street, and would effectively be behind the houses on lots 1-4, Gold Mine Road, due to the pipestem nature of this property.

4. *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 construction continues the residential use of the property and is consistent with the Olney Master Plan. In addition, the Board finds that the grant of this variance would leave that portion of the "high priority forest" identified by the Master Plan and located in the Benigni's rear yard undisturbed.

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


The Board finds, per the testimony of Ms. Benigni, that the proposed greenhouse will be located a significant distance behind the houses located on lots 1-4 and fronting on Gold Mine Road, and that the grant of the variance will not be adverse to the use and enjoyment of the abutting neighbor on lot 6, as evidenced by the letter of support submitted by that neighbor. See Exhibit 7.

Accordingly, the Board finds that the requested variance to allow the proposed accessory structure to be located outside of the area behind the rear building line of the principal building can be granted, subject to the following conditions:

1. The petitioners shall be bound by all of the testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record at Exhibit Nos. 4(a) and (b) and 5(a) and (b).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn 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.


Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of May, 2016.


Barbara Jay
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. 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.