

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6556

PETITION OF DR. ALLEN CHURCH

OPINION OF THE BOARD
(Hearing Date: April 4, 2018)
(Effective Date of Opinion: April 13, 2018)

Case No. A-6556 is an application by Dr. Allen Church (the "Petitioner") for two variances from the requirements of Section 59-4.4.6.B.2 of the Zoning Ordinance, needed to construct an accessory structure (solar array). First, the Petitioner seeks a variance from the requirement in Section 59-4.4.6.B.2.c of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. In addition, the Petitioner seeks a variance to locate the proposed accessory structure within thirteen (13) feet of the side lot line, requiring a variance of two (2) feet. Section 59-4.4.6.B.2 of the Zoning Ordinance requires that accessory structures be located fifteen (15) feet from the side lot line.

The Board of Appeals held a hearing on the application on April 4, 2018. The Petitioner appeared at the hearing with Bjorn Falk, his contractor, who is the Operations Director for EDGE Energy. Lewis Vendetti, a neighbor whose property abuts the Petitioner's property to the west, along the rear property line, also appeared.

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

EVIDENCE PRESENTED

1. The subject property is Lot 14, Block F, Olney Acres Subdivision, located at 17500 Ridge Drive, Rockville, Maryland, 20853, in the RE-1 Zone. Per SDAT, the property is 58,806 square feet in size. It is roughly rectangular in shape, with a rear lot line that is slightly slanted such that the property's southwest side lot line is 56 feet longer than its northeast side lot line. See Exhibit 4(b).
2. The Statement submitted with the variance application states that "[w]hen considering the subject property's topographical conditions, it must be considered with photovoltaic (PV) generation in mind. The property is host to many tall trees

and bushes which limit the area suitable for solar PV generation. Following the ordinance specifications would leave the array heavily shaded and cause a loss of production. The contractor has considered alternate locations on the property within the Zoning Ordinance rules and found them to be unsuitable." The Statement further notes that "Dr. Church has owned the subject property since 4/1/98. This is not sufficient time for trees to grow to the size seen at the subject property. Dr. Church has not transplanted any of the trees causing the shading. The tree growth on the property is also consistent with that of other properties in the neighborhood." See Exhibit 3.

3. With respect to whether the requested variances are 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 Statement notes that:

When designing a solar PV system shading dictates the viability of a site. When choosing the proposed location the designer chose the location that will give Dr. Church the best return on his investment. Moving the array two feet away from the property line will have an estimated -7% impact on the production of the system. Moving the array two feet back towards the rear face of the home will have a -9% impact on the production of the system.

See Exhibit 3.

4. With respect to the impact of the proposed solar array on neighboring properties, the Statement indicates that the array will be setback 109 feet from the road with an intervening tree line which will "ensure the array is hardly noticeable from the road or other abutting or confronting properties." It further notes that the array is designed to tilt to the south, away from the northern property line, "nullifying any possible reflective glare from the panels." With respect to compliance with the general plan and applicable master plan, the Statement notes that the proposed installation would meet the plans' goals of "preserving green spaces while maintaining the detached single family dwelling suburban design." See Exhibit 3.
5. At the hearing, Mr. Bjorn Falk testified that the subject property has trees and bushes which present "lots of shading issues." He testified that when installing solar power, he always assesses the viability of a roof-mounted system first, but that a roof-mounted system is not an option in this case. He testified that a ground-mounted array in the proposed location would give the Petitioner a return on his investment in seven years, much sooner than other locations. In response to a Board question asking why the array could not be located west of the existing shed shown on Exhibit 4(d), Mr. Falk testified that moving the array to that side would cause shading at about noon or half past noon, and that as the sun moved to the west, the shading would increase and the output of the array would decrease. In addition, the Petitioner noted that there is a large white oak in that area. See

Exhibit 5(a). In response to a Board question asking how tall the array would be, Mr. Falk testified that it would be 101 inches at the back.

6. At the hearing, the Petitioner testified that the area directly west of the proposed array is a relatively open back lawn, and that the treeline begins just left (west) of that area. He further testified that there is a tree to the left (west) of the shed, but no trees directly in front of the shed. He testified that there is a large oak immediately northwest of the shed, and that that is the beginning of the treeline which runs across his entire back yard. He stated that the trees to the south of his house extend all the way to the road.
7. At the hearing, Mr. Lewis Vendetti, whose property abuts the subject property to the west, along its rear lot line, testified that there is a significant downhill slope from the subject property to his property, and that if the Petitioner were to remove trees to install the proposed solar array, there would be a drainage problem on his property.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The 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.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that for the purpose of installing the proposed solar array, the extensive tree cover on the subject property, and the steep slope between the subject property and the abutting property to the west which, per the testimony of Mr. Vendetti, would cause drainage issues for his (abutting) property if the tree cover were removed, constitute unusual topographical features specific to the subject 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, per the Statement, that the Petitioner is not responsible for the existing tree cover on the subject property. In addition, given the testimony that the existing trees—which the Petitioner did not plant—are needed to control runoff down the steep slope between the subject property and the abutting property to the west, the Board finds that the slope between the two properties must have existed at the time the trees were planted, and thus finds that the existence of the slope cannot be the result of any actions taken by the Petitioner.

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 unusual topographical features of the subject property, namely its extensive tree cover and the steep slope between the subject property and the abutting property to the west, preclude the construction of the proposed solar array in an area of the property which would otherwise be allowable under the Zoning Ordinance, causing the Petitioner a practical difficulty. The Board further finds that allowing the proposed solar array to be located in the location shown on Exhibit 4(b) would avoid any potential drainage problems and would allow for enough sunlight to support operation of the proposed array, and is therefore the minimum necessary to overcome the practical difficulties that would be imposed by full compliance with the locational restrictions set forth in the Zoning Ordinance.

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;*

The Board finds that the construction of this accessory structure continues the residential use of the existing home, and can be granted without substantial impairment to the intent and integrity of the Olney Master Plan.

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, per the Statement, that the proposed solar array will be setback 109 feet from the road with an intervening tree line which will "ensure the array is hardly noticeable from the road or other abutting or confronting properties." The Board further finds that the array is designed to tilt to the south, away from the northern property line, which will eliminate problems with reflective glare. In addition, the Board finds that at least one abutting neighbor, Mr. Vendetti, has testified that the concerns he had about the proposed array were addressed in the context of the hearing. Finally, the Board notes that while not determinative, the record contains no letters from abutting or confronting property owners objecting to the grant of the proposed variances. Thus the Board finds that the granting of the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

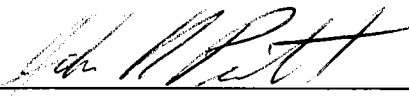
Accordingly, the requested variances to allow an accessory structure to be located in front of the rear building line, and to be set back thirteen (13) feet from the side lot line, are **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, and by the testimony of his contractor; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

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

agreement, and with Katherine Freeman opposed, 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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of April, 2018.



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.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.