

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5592

PETITION OF HASTINGS DEVELOPMENT

(by: Mark Kaufman)
(Hearing held May 30, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, September 6, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2) and 59-C-1.323(b)(1). The petitioner proposes to construct a garage that requires variances of 20.67 feet as it is within 4.33 feet of the rear lot line and of 4.25 feet as it is within 2.75 feet of the side lot line. The required rear lot line setback is twenty-five (25) feet and the required side lot line setback is seven (7) feet.

Brian McCarthy, the petitioner's architect, appeared for the petitioner at the public hearing and Dr. Joseph Finizio, John Herbers, Phyllis Arner and Anne Emmett, neighboring property owners, appeared in opposition to the variance request.

The subject property is Lot 18, Block 7, Edgemoor Subdivision, located at 5400 Moorland Lane, Bethesda, Maryland, in the R-90 Zone (Tax Account No. 00491016).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 15.08 x 20.25 foot garage addition in the southwest corner of the property. The petitioner testified that he proposes to demolish the existing shed and reconstruct a garage. See, Exhibit Nos. 16(a) and 16(e).
2. The petitioner testified that the property is located at the intersection of Moorland Lane and Glenbrook Road and that the property is an unusually shaped corner lot with a small buildable envelope.
3. The petitioner testified that the construction of the garage at another site on the property would compromise the safety of entering and exiting the property and would reduce the open space on the property. The petitioner testified that the existing vegetation and shrubbery would screen the view of the garage.
4. Mr. McCarthy testified that a variance would also be required if the garage were to be built in the eastern side yard along Glenbrook Road and that to construct the garage in this area of the property would require that the garage be sited in front of the other homes that are located on Glenbrook Road.

5. Dr. Finizio testified that he has resided in his home for 5 years and that the existing shed on the petitioner's lot has never been used as a garage. Dr. Finizio testified that he would be most impacted by the proposed garage because his covered porch would adjoin the proposed structure. See, Exhibit No. 17(h).
6. Dr. Finizio testified that as a result of the changing the shed to a garage, the use would intensify in this area of the lot. Dr. Finizio testified that a garage is not typical for the homes in the neighborhood and that the proposed construction would change the aesthetics and the character of the neighborhood.
7. Ms. Arner testified that the neighborhood is made up of lots with a lot of green space and that the requested variance would reduce the green space in the neighborhood. Ms. Arner stated that the requested variance would create an exceptional situation, rather than being the rule for properties in the neighborhood, and would affect the character of the neighborhood.
8. Ms. Emmett testified that the requested variance would reduce the green space in the neighborhood and that the garage addition would result in a too tight fit of structures on the property.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a), (b) and (c) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

1. The Board finds that the petitioner's lot is not unique and has no existing exceptional or extraordinary topographical conditions that are peculiar or unusual to the property.
2. The Board notes that variances are regularly granted for repair and reconstruction of structures that have existed for some time and that were built with a valid building permit, however, the Board finds that the improvements proposed to the existing shed would materially change the character and intensify the use of the proposed structure.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board further notes that the proposed garage could be shifted to another site on the property that would not necessitate the need for a variance or the removal of the existing shrubbery and trees. (Transcript, p. 42). Therefore, the requested variances are not the minimum reasonably necessary.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties.

The Board finds that the proposed construction would be detrimental to Dr. Finizio's use and enjoyment of his property. (Transcript, p. 41). See, Exhibit No. 17(h).

The petition does not meet the requirements set forth in Section 59-G-3.1 of the Montgomery County Zoning Ordinance and therefore, the requested variances of 20.67 feet from the required twenty-five (25) foot rear lot line setback and of 4.25 feet from the required seven (7) foot side lot line setback for the construction of a garage are denied.

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.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 6th day of September, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of 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