

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5663

PETITION OF CHOUNG GIL LIM

(Hearing held November 28, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, December 28, 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-1.326(a)(2)(c) and 59-C-1.326(a)(2)(b). The existing accessory structure (shed) requires a 2.08 foot variance as it is within 2.91 feet of the side lot line and a variance of 3.50 feet as it is within 1.50 feet of the side lot line. The required side lot line setback is five (5) feet and the required rear lot line is five (5) feet.

The subject property is Lot 20, Block 1, Newport Hills Subdivision, located at 11209 Woodson Avenue, Kensington, Maryland, in the R-60 Zone (Tax Account No. 01363370).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner seeks variances for the existing 12 x 16 foot accessory structure (shed).
2. The petitioner testified that he has resided in the property for one year and that the shed was existing at that time. The petitioner testified that the structure was built by his father-in-law more than ten years ago.
3. The shed is located in the southeast corner of the property and backs up a similar structure as shown on Exhibit No. 5(b). The property has a privacy fence at the side and rear yard boundaries.

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-G-3.1 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.

The shed has existed for approximately 10 years; no alterations have been made to the structure or are proposed. The prior owner built the shed. The Board finds that the existence of the shed for 10 years is an exceptional circumstance that is unique to the property. The Board observes that this finding is consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

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

The Board finds that the variances requested for the existing 12 x 16 foot accessory structure (shed) are the minimum reasonably necessary to overcome the exceptional circumstance.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The existing structure is used for residential purposes and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

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

The accessory structure (shed) backs up to a similar structure and is screened by a privacy fence. The Board finds that the requested variances will not be detrimental to the use and enjoyment of the adjoining or neighboring properties.

Accordingly, the requested variances of 2.08 feet from the required five (5) foot side lot line setback and of 3.50 feet from the required five (5) foot rear lot line setback for the existing accessory structure (shed) are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.

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 Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Angelo M. Caputo 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 28th day of December, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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 Rules of Procedure.