

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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([www.co.mo.md.us/council/board.html](http://www.co.mo.md.us/council/board.html))

**Case No. A-5768**

**PETITION OF VERA FRANCISCO**

(Hearing held June 19, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, July 19, 2002)

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)(b) and 59-C-1.326(a)(2)(c)(4). The existing accessory structure (garage) requires variances of two (2) feet as it is within three (3) feet of the rear lot line and of four (4) feet as it is within two (2) feet of the side lot line. The required rear lot line setback is five (5) feet and the required side lot line setback is six (6) feet.

The subject property is Lot 25, Block W, Connecticut Avenue Park Subdivision, located at 3912 Havard Street, Silver Spring, Maryland, in the R-60 Zone (Tax Account No. 01290193).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner seeks variances for the existing 24 x 12 foot accessory structure/garage. The petitioner testified that the garage replaced an existing, deteriorated structure located at the same site on the property and that the structure was built without a building permit.
2. The petitioner testified that the area at the front of the garage slopes downward and that the structure is located in the only flat area on the lot. The petitioner testified that the neighbor most impacted by the garage has no concerns about the structure and that the neighbor's fence screens that structure from his view.
3. In response to questions from the Board, the petitioner testified that the lot was regraded to install a patio area and that the replaced structure is larger than the structure that previously existed.

**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) 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 Board finds that the petitioner's lot has no exceptional topographical or other existing conditions that are not shared with the adjoining and neighboring properties. The Board notes that the petitioner's lot is similar in shape and size to the neighboring properties, as shown on Exhibit No. 9 (zoning vicinity map), and that the lot's topography does not prevent new construction.

(b) *Such variance is the minimum reasonably necessary to overcome the aforesaid extraordinary situation.*

The Board finds that the structure, as it exists, is not the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b) and the Board did not consider the other requirements in that section for the grant of variance. Accordingly, the requested variances of two (2) feet from the required five (5) foot rear lot line setback and of two (2) feet from the required six (6) foot side lot line setback for the existing accessory structure (garage) is 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 Angelo M. Caputo, seconded by Louise L. Mayer, with Allison Ishihara Fultz and Donna L. Barron, in agreement, the Board adopted the following Resolution. Board member Donald H. Spence, Jr., Chairman, was necessarily absent and did not participate in this Resolution.

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Donna L. Barron  
Vice 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 19th day of July, 2002.

\_\_\_\_\_  
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 Rules of Procedure.