

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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(www.co.mo.md.us/council/board/html)

Case No. A-5770

PETITION OF BEVERLY O'BRIEN
(Hearings held June 19 and July 24, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, September 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 a variance from Section 59-C-1.326(a)(1). The petitioner proposes to construct an accessory structure (shed) in the front yard that requires a variance from Section 59-C-1.326(a)(1). Section 59-C-1.326 requires accessory structures to be located in the rear yard only. The petitioner's original request to construct a garage was modified at the hearing held on June 19, 2002.

Herbert Wilens and David Freishtat, Esquire, represented the petitioner at the public hearing. Gail and Gary Newman, neighbors, appeared in opposition to the variance request.

The subject property is Lot 2, Block 1, Glenallen Subdivision, located at 2012 Glenallen Avenue, Silver Spring, Maryland, in the R-90 Zone (Tax Account No. 01356396).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 12 x 16 foot accessory structure/shed in the northwest corner of the lot.
2. The property is a corner lot located at the intersection of Glenallan Avenue and Erskine Avenue. The lot backs up to an apartment complex.
3. The front of the residence faces Glenallan Avenue and the lot's northern side yard adjoins Erskine Avenue. The Department of Permitting Services (DPS) designated the northern side yard as a front yard.
4. The property receives an enormous amount of storm water from properties to its north and west. Petitioner claims that the storm water from the neighboring properties regularly floods the basement. The petitioner remedied the storm drainage issue by installing an intake system to collect and direct the storm water. The drainage system is installed below ground in the northern and the southern sections of the lot. Public utilities are located

in the southwest section of the lot. Fuel tanks are located in the southern side yard. See, Exhibit No. 12.

5. The petitioner testified that the structure would be used for storage and that the shed can not be located elsewhere on the property. The petitioner testified that the shed would be located in the northwest corner of the lot and that this location would not interfere with any of the underground drains, lines or tanks.
6. Ms. Newman testified that Erskine Avenue is paper street that provides access to their residence. Ms. Newman stated that the petitioner's residence has an existing garage and that an addition could be added in this area without the need for a variance.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does 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 improvements made to address the drainage issues on petitioner's lot do not create a zoning reason for the grant of the requested variance. In addition, uniqueness or peculiarity for purposes of the evaluation of a proposed variance does not refer to the extent of improvements upon the property. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994)). None of the other factors cited by the petitioner create an exceptional condition peculiar to petitioner's property.

The Board further finds that proposed construction could be located elsewhere on the lot without the need for a variance.

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

Even if the Board could find an exceptional condition relating to the petitioner's property, the Board finds that the structure, as proposed, significantly exceeds the size of a typical shed and would encroach on the required front lot line setback. The variance, therefore, is not the minimum reasonably necessary. See, Exhibit No. 17(c).

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 set forth in that section for grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure/shed in the front yard is denied.

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.

Board member Donald H. Spence, Jr., Chairman, was necessarily absent and did not participate in this Resolution.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Angelo M. Caputo and Donna L. Barron, in agreement, the Board adopted the following Resolution:

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 September, 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.