

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5786

PETITION OF BRIAN LUX

RESOLUTION TO DENY REQUEST FOR RECONSIDERATION

(Resolution Adopted October 2, 2002)

(Effective Date of Resolution: October 22, 2002)

The Board of Appeals has received a letter, dated September 10, 2002, from David D. Freishtat, Esquire and Cara A. Frye, Esquire, on behalf of Brian and Leslie Lux. Mr. Freishtat and Ms. Frye's letter requests Reconsideration of the Board's Opinion, effective August 27, 2002, denying the above-captioned variance application. The letter requests "the opportunity to more completely describe the unique characteristics and peculiar conditions of [the] property" and gives information addressing the requirements of Section 59-G-3.1 of the Zoning Ordinance.

The subject property is Lot 28, Block G, Old Farm Subdivision, located at 11601 Farmland Drive, Rockville, Maryland, in the R-90 Zone.

The Board of Appeals considered the request for reconsideration at its Worksession on October 2, 2002. Rule 10.1.2 of the Board of Appeals Rules of Procedure provides, pertaining to the grounds upon which the Board can grant reconsideration:

The Board may grant reconsideration only on evidence of changed circumstances, new evidence *that could not reasonably have been presented* at the original hearing, or if some mistake or misrepresentation was made at the original hearing that requires rehearing and re-argument in order to be corrected. [Emphasis added].

The Board finds that all of the information presented in the request for reconsideration could, in fact, have been presented at the hearing on the variance application.

Section 59-G-3.1(a) of the Montgomery County Zoning Ordinance provides:

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. [Emphasis added].

The Board finds that the Petitioners have failed to present evidence of any condition peculiar to the subject property. Therefore,

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request for reconsideration of the Board's Opinion, effective August 27, 2002, in Case No. A-5786, is **denied**.

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

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 22nd day of October, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
(www.co.mo.md.us/council/board/html)

Case No. A-5786

PETITION OF BRIAN LUX
(Hearing held July 24, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, August 27, 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 Section 59-C-1.323(a) and 59-C-1.323(b)(1). The petitioner proposes to construct a garage addition the requires variances (1) of 3.88 feet as it is within twenty-eight (28) feet of the established front building line; (2) of two (2) feet as it within six (6) feet of the side lot line and (3) of four (4) feet as it reduces the sum of both side yards to twenty-one (21) feet. The established building line is 31.88 feet, the side lot line setback is eight (8) feet and the sum of both side yards is twenty-five (25) feet.

The subject property is Lot 28, Block G, Old Farm Subdivision, located at 11601 Farmland Drive, Rockville, Maryland, in the R-90 Zone (Tax Account No. 00098552).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 10 x 26.6 foot garage addition.
2. The petitioner testified that he lives across the street from a school and that the activities of school sometimes restricts the parking on the street. The petitioner testified that a fire hydrant is located in his front yard and the hydrant also restricts the parking at the front of his lot.
3. The petitioner testified he can not build in the rear yard because of two mature trees and a swale are located in this area. The petitioner testified that his neighbors have requested that no new

construction be built in his rear yard because it would disturb the neighbors' serenity and use of their rear yards.

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 conditions not shared with the neighboring properties and that the petitioner's lot is consistent in shape and size with the other lots in the neighborhood. See, Exhibit No. 8.

The Board notes that the conditions identified by petitioner, including the issue of school overflow parking, impact the neighboring properties as well and do not present zoning reasons for granting the variances requested.

The petition does not meet the requirements of Section 59-G-1.3(a). The Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of (1) 3.88 feet from the required 31.88 foot established front building line, (2) of two (2) feet from the required eight (8) foot side lot line setback and (3) of four (4) feet as it reduces the twenty-five (25) foot sum of both side yards for the construction of a garage addition 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 Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following 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 27th day of August, 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.