

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-5796

PETITION OF KEVIN M. BARRY
(Hearing held September 11, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, October 11, 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(b)(1). The petitioner proposes to construct a garage addition that requires variances of five (5) feet as it is within three (3) feet of the side lot line and of seven (7) feet as it reduces the sum of both side yards to eighteen (18) feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is twenty-five (25) feet.

The subject property is Lot 15, Block A, Old Farm Subdivision, located at 7121 Wolfree Lane, Rockville, Maryland, in the R-90 Zone (Tax Account No. 00098186).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to a 13 x 27.6 foot garage addition. The proposed addition would be located in the eastern side yard.
2. The petitioner testified that his property is a pie-shaped lot located on a cul-de-sac. The petitioner testified that the proposed garage would be constructed using the footprint of the existing driveway.
3. The petitioner testified that the prior owner converted the property's garage into a laundry room and that the proposed addition would be similar to other structures in the neighborhood.

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 that are not shared with the neighboring properties and that neighboring Lots 12, 13 and 14 on the cul-de-sac are similarly shaped. See, Exhibit No. 9.

The Board notes that 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). The factors cited by the petitioner do not create an exceptional condition peculiar to petitioner's property.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of five (5) feet from the required eight (8) foot side lot line setback and of seven (7) feet from the required twenty-five (25) foot sum of both side yards for the construction of a garage addition are is denied.

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

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 11th day of October, 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.