

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. S-2437

PETITION OF ELGIN C. AND MADELINE M. COWART

RESOLUTION TO DISMISS PETITION AND DENY REFUND OF FILING FEE
(Resolution adopted May 15, 2002)
(Effective Date of Resolution, July 18, 2002)

The Board is in receipt of a letter dated April 30, 2002, from Elgin C. and Madeleine M. Cowart. Mr. and Mrs. Cowart's letter states:

"After postponing this case due to over \$14,000 of water damage to the lower level of our two story cottage from multiple pinholes in our copper pipes, we entered into a contract with a licensed Maryland Contractor. The replacement of all the wooden flooring on this level was required. However, the materials installed warped shortly after the work was completed last fall. We allowed the Contractor a six month period for the wood to return to normal. However, to date the wood is still cupped and reflects a permanent warped appearance.

The Engineer we engaged produced eight pages regarding various problems inherent in the existing workmanship. Although the Contractor rendered a written two year warrantee, he is not honoring it at this time.

As a direct result, we cannot move on the Appeal matter until this unfortunate set of unintended circumstances is erased. Please feel free to cancel Case #2437 now and return our fee as we cannot fathom where this tragedy will lead us."

The subject property is Lot 3, Block D, Spring Hill Subdivision, located at 3407 Inverness Drive, Chevy Chase, Maryland, in the R-60 Zone.

On Wednesday, July 5, 2000, the Board of Appeals held a public hearing on Case No. S-2437. The hearing was continued to permit the petitioners time to establish residence in the house, as required by Section 59-G-2.00(b)(1) of the Zoning Ordinance, and was intended to return to the Board's agenda for action upon notice from the petitioners that they had fulfilled that requirement.

The Board after careful review of the record, considered the Cowart's request of April 30, 2002 at its Worksession held on May 15, 2002. The Board finds that the request to dismiss the petition can be granted as it is in accordance with the Montgomery County Zoning Ordinance, which states:

59-A-4.25 Withdrawal of petition.

. . . the board shall have discretion to allow the application to be withdrawn without prejudice to the limitation on refilling specified in subsection 59-A-4.126.

The Board finds that the request for the refund of the filing must be denied as it is not in accordance with the Board's Rules of Procedure, which states:

1.6 Refund of fees

On written request, the Board may refund filing fees:

- a. if an application is withdrawn within 48 hours after it is filed or before public notice is issued (90% refunded);
- b. if an application for a variance or and administrative appeal is *withdrawn before a public hearing* (50% refund).

In the instant case, a public hearing was convened on July 5, 2000. Therefore, the Board cannot grant a refund of the filing fee. Accordingly, the Board grants the request to withdraw the petition and denies the request for the refund of the filing fee.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that pursuant to a written request in Case No. S-2437, Petition of Elgin C. and Madeline M. Cowart, is **dismissed**.

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the written request for the refund of the filing fee is **denied**.

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

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 18th 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.