

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5996

PETITION OF LORIE ZUCCO-MITCHELL AND JOHN J. MITCHELL

(Hearing held July 21, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, August 26, 2004)

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)(2)(c). The petitioners propose the renovation and reconstruction of an existing accessory structure/detached garage in the side yard that requires a variance of 2.50 feet as it is within 2.50 feet of the side lot line. The required setback is five (5) feet.

The subject property is Lot 10, located at 3509 Cummings Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone, Zone (Tax Account No. 00521615).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the renovation and reconstruction an existing 12 x 22 foot accessory structure/detached garage located in the northeast section of the property.
2. The petitioners testified that the sidewall of the garage is parallel to their home and that the property's driveway abuts the garage. The petitioners testified that their property is a very narrow lot that is fifty feet in width and that the repositioning of the garage elsewhere on the property would require the relocation of the existing driveway.
3. The petitioners testified that the existing structure was originally built in the 1900s and that it is currently located in the eastern side yard setback. The petitioners testified that the existing structure has termite and rot damage and that it can not be repaired without being completely reconstructed. See, Exhibit Nos. 7 and 13 [photographs]. The petitioners testified that the new structure will expand the existing footprint by eight inches. See, Exhibit Nos. 5(a) and 5(b) [foundation plans and elevations].

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 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 existing detached garage is currently located in the property's eastern side yard setback. The structure has existed on the property since the 1900s. The renovation and reconstruction of the garage will not materially expand the footprint of the existing structure. The petitioners' property is a very narrow lot, with a width of fifty feet. The width of the lot is substandard for the zone. The Board finds that these are exceptional circumstances peculiar to the petitioners' lot and that the strict application of the regulations would result in practical difficulties for the property owners.

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

The Board finds that the variance request for the renovation and reconstruction of the existing detached garage is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the variance will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance request will not materially change the view from the neighboring homes and will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 2.50 feet from the required five (5) foot side lot line setback for the renovation and reconstruction of the existing accessory structure/detached garage is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing 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 26th day of August, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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.