

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-5977

PETITION OF LORETTA EMBER
(Hearing held June 30, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, August 2, 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)(B)(4). The existing accessory structure (garage) requires a variance of five (5) feet as it is within eight (8) feet of the rear lot line. The required setback is thirteen (13) feet.

Roberto Lazo, the petitioner's contractor, appeared with the petitioner at the public hearing.

The subject property is Lot 30, Block A, Greenwood Knolls Subdivision, located at 13322 Georgia Avenue, Silver Spring, Maryland, 20906, in the R-60 Zone (Tax Account No. 01316813).

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

EVIDENCE PRESENTED TO THE BOARD

1. The existing 22 x 40 foot detached garage located in the southwest section of the property requires a five (5) foot variance from the rear yard setback. The petitioner's lot is 11,462 square feet. See, Exhibit No. 4 [site plan].
2. The petitioner testified that the front yard of the property slopes upward and that the State Highway Administration (SHA) has a ditch with a concrete apron located next to the front of her lot. The petitioner testified that a ditch is located at the front of her property that catches the water runoff from her lot.
3. Mr. Lazo testified that the existing structure received a building permit prior to its construction and that the slab and footing inspections for the structure were approved. Mr. Lazo testified that after the completion of the structure, the petitioner received notice from the Department of Permitting Services (DPS) that it would require 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 Board finds that the petitioner's lot has no exceptional topographical or other conditions peculiar to the property and that the petitioner's lot exceeds the minimum lot size for the R-60 Zone. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that Section 59-C-1.326(a)(4) of the Montgomery Zoning Ordinance requires that "... any accessory building or structure in the zones indicated thus (*) with a length along a rear or side property line which has a linear dimension greater than 24 feet, the minimum setback from the rear or side property line must be increased from the requirement in (2) above to a ratio of one foot for every 2 feet that the dimension exceeds 24 linear feet".

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of five (5) feet from the required thirteen (13) foot rear lot line setback for the construction of an accessory structure/garage is denied.

The Board adopted the following Resolution:

Board member Louise L. Mayer and Chairman Donald H. Spence, Jr., were necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded by Angelo Caputo, with Allison Ishihara Fultz, Acting 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.

Allison Ishihara Fultz
Acting 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 2nd day of August, 2004.

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.