

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-5999

(Hearing held on June 30, 2004)

PETITION OF MARK AND ANA-MARIA HEFFERNAN

(Effective date of Opinion: August 12, 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). The petitioners propose to construct an accessory structure (detached garage) in the front yard. Section 59-C-1.326(a) requires accessory structures to be located in the rear yard only.

The subject property is Lot 8, Hawkins Subdivision, located at 4109 Jones Bridge Road, Chevy Chase, Maryland, 20815, in the R-90 Zone (Tax Account No. 03043596).

Kinley R. Dumas, Esquire, represented the petitioners at the public hearing.

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 20 x 22 foot detached garage.
2. The subject property is a recorded lot that has no frontage on any public road and it is completely landlocked. The subject property is included in the Hawkins Lane Historic District, although it is not a contributing resource in the District. It has no access to Hawkins Lane. The subject property is accessible via an easement that provides ingress and egress through neighboring Lot 6 to Jones Bridge Road. The residence is not visible from Jones Bridge Road and only partially visible from Hawkins Lane.
3. Pursuant to the subdivision approval by the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the issuance of an Historic Area Work Permit by the Montgomery County Historic Preservation Commission (HPC) and the Department of Permitting Services (DPS), in accordance with the Guidelines for the Hawkins Lane Historic District, the petitioners' home is sited to face towards Hawkins Lane, with its front door facing the adjoining lot and Hawkins

Lane. See, Exhibit No. 15 [The Hawkins Lane Historic District Development Guideline Handbook].

4. The petitioners could construct a garage addition in the northern section of the property without the need for a variance, but they are prohibited from doing this by the Guidelines for the Hawkins Lane Historic District. The Guidelines prohibit the construction of attached outbuildings and garages in the Historic District. See, Exhibit Nos. 15(a) [HPC Staff Report dated 12/8/93], 15(b) [HPC Staff Report 5/5/04], 15(c) [HPC Decision dated 11/13/93]. The proposed garage will be built on an existing concrete parking pad located at the southern end of the property. The detached garage, as proposed, has received HPC approval and will be architecturally compatible with the structures in the Historic District. See, Exhibit Nos. 4(a) [site plan] and 4(b) [survey plat].
5. DPS designated the southern section of the property, where the garage is proposed, as a front yard. The proposed garage meets all of the required setbacks for the zone and the property is located approximately 159 feet from the right-of-way access to Jones Bridge Road.

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 of the Zoning Ordinance 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 applications of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is located in the Hawkins Lane Historic District. The property is a recorded lot that has no frontage on any public road. The lot is completely landlocked and ingress and egress is via an easement from neighboring Lot 6. DPS designated the southern section of the property as a front yard. A garage addition could be located in the northern section of the property without the necessity of a variance, but is prohibited by Hawkins Lane Historic District Development Guidelines. The proposed garage will be built on an existing concrete pad and will not expand the footprint of the existing pad. The proposed garage will not be visible from Jones Bridge Road and will be only partially visible from Hawkins Lane.

The Board finds that these are exceptional circumstances peculiar to the property 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 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 this property and the variance will not impair the intent, purpose, or integrity of the general plan or the 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 proposed garage will not materially impact the view from the properties that border the petitioners' lot and it will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance to permit the construction of an accessory structure/detached garage in the front yard is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the representations of their attorney, 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 the plans entered in the record as Exhibit Nos. 4(a) and (b) and 5.

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 M. Caputo, with Allison Ishihara Fultz, Acting Chairman, in agreement, the Board adopted the foregoing 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.

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 12th 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.

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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 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.