

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6005

PETITION OF C. FREDERIK SKOGLUND

(Hearing held September 1, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, September 30, 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-1.323(b)(1). The existing one-story garage addition reduces the sum of both side yards to 23.20 feet. A variance of 1.80 feet is required. The required sum of both side yards is twenty-five (25) feet.

Alan B. Moldawer, Esquire, represented, petitioner at the public hearing. Ehridiki Chalsochoris, the prior property owner, also appeared at the public hearing.

The subject property is Lot 10, Block 29, Bel Pre Woods Subdivision, located at 14012 Castaway Drive, Rockville, Maryland, 20853, in the R-90 Zone (Tax Account No. 10388118).

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

EVIDENCE PRESENTED TO THE BOARD

1. The existing 17.2 x 18.6 foot garage reduces the required sum of both side yards to 23.20 feet. The garage encroaches into the property's northern side yard boundary.
2. The petitioner testified that the garage was built several years ago by the prior owner and that the prior owner received two separate building permits for the construction of the garage addition. The petitioner testified that the Department of Permitting Services [DPS] received a complaint about the structure and that during an inspection by DPS, it was determined that the garage was in violation of the total side yards setback.
3. The petitioner testified that a wing wall was constructed at the front and rear of the garage for aesthetic purposes and that these walls are what encroach into the required setback. See, Exhibit No. 4 [site plan]. The petitioner testified that if the variance were to be denied, the garage would have to be rebuilt.

4. Ms. Chalsochoris testified that wing wall was constructed to accommodate a fireplace. Mr. Moldawer stated that it was his understanding that the wing wall provided structural support for the roof overhang and that the removal of the wing wall would require the movement of the roof overhang support structure. Mr. Moldawer stated that the variance request is the result of an extraordinary situation and that the variance request is de minimus.

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 is has no exceptional topographical or other conditions peculiar to the property and that the property is similar in shape and size to the other properties on Castaway Drive. See Exhibit No. 9 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995)).

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 1.20 feet from the twenty-five (25) foot sum of both side yards requirement for the existing garage is denied.

The Board adopted the following Resolution:

Board Member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with 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 30th day of September, 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.