

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6031

PETITION OF GARY A. CLAWSON
(Hearing held December 1, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, January 28, 2005)

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)(3). The petitioner proposes the construction of an accessory structure (detached garage) that requires a six (6) foot variance as it is within four (4) feet of the rear lot line. The required setback is ten (10) feet.

A. F. Clarens, AIA, appeared with the petitioner at the public hearing.

The subject property is Lot 22, Block 11, Sumner Subdivision, located at 5709 Rockmere Drive, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00608035).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 17.66 x 25.83 foot accessory structure/detached garage.
2. Mr. Clarens testified that the property has a large front yard and a very small rear yard. The property is 12,000 square-foot, corner lot. Mr. Clarens testified that the topography slopes upward at the front of the property and downward at its rear.
3. The petitioner testified that sloping topography is a characteristic of the neighborhood, but that the slope is steepest on his lot. The petitioner testified that the variance would provide a reasonable use of the property. Mr. Clarens testified that the proposed construction could not be moved to the property's rear yard because it would deprive the homeowners of the use of this area.

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 are not shared with the adjoining and neighboring properties. The Board further finds that sloping topography is a characteristic of the neighborhood and that new construction would be built on the property without the need for a variance.

The Board notes that the petitioner's lot significantly exceeds the minimum lot size for the zone and that neither the siting of a house nor the use of the property are zoning reasons which justify the grant of a variance. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994).

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 six (6) feet from the required ten (10) foot rear lot line setback for the construction of an accessory structure/detached garage is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, 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
Chair, 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 27th day of January, 2005.

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.