

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6249

PETITION OF KAREN DOSWELL

(Hearing held June 25, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, September 5, 2008)

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(a). The petitioner proposes the construction of a one-story addition (garage) that requires a variance of nine (9) feet as it is within thirty-one (31) feet of the front lot line setback. The required established building line is forty (40) feet.

The subject property is Lot 17, Block N, Stonegate Subdivision, located at 2 Redgate Court, Silver Spring, Maryland, 20905, in the R-200 Zone (Tax Account No. 01759458).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a one-story addition/garage in the northeast section of the lot.
2. The petitioner's testified that the subject property is a corner lot located at the intersection of Redgate Court and Redgate Drive. The petitioner testified that most of the lots in her neighborhood are rectangular in shape, but her lot is very distinctly shaped. The petitioner testified that her lot's eastern boundary resembles a severely inverted funnel and that the shape of the lot does not resemble the other lots that adjoin and confront the property. See Exhibit Nos. 4 [site plan] and 10 [zoning vicinity map].
3. The petitioner testified that the topography of her lot is significantly different than that of the neighboring lots and that the lot has a severe incline at the northern Redgate Court boundary. The petitioner testified that the subject property's side and rear yards include a large number of mature trees. In response to questions from the Board, the petitioner testified that the change in grade from the street on

the Redgate Court side of the lot to the plateau of the petitioner's home is approximately 12 to 15 feet. See Exhibit Nos. 8(a)-(c) [photos].

4. The petitioner testified that the access to the property's existing driveway is from Redgate Drive. The petitioner testified that a garage could be built without a variance, but that the construction would require removal of trees and would not provide easy access to either the front or the back of the house.

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 subject property is an irregularly shaped and steeply sloped lot. The Board finds that while the lot is unusual and distinctly configured, the variance request is driven by the dimensions of the proposed garage and that new construction could be accommodated on the lot without the need for a variance. Carney v. City of Baltimore, 201 Md. 130, 137 (1952).

On a motion to grant by David K. Perdue, seconded by Wendell M. Holloway, with Catherine G. Titus and Allison Ishihara Fultz, Chair, in opposition, the motion failed for lack of a majority.

On a motion to deny by Allison Ishihara Fultz, Chair, seconded by Catherine G. Titus, with David K. Perdue and Wendell M. Holloway, in opposition, the motion failed for lack of a majority.

The petition was denied for lack of a majority vote to grant the request. The petition failed to 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 nine (9) feet from the required forty (40) foot established front building line setback for the construction of a one-story addition/garage is denied.

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 5th day of September, 2008.

Katherine Freeman
Executive Director

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.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.