

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6251

PETITION OF KATHARINE A. RADI

(Hearing held May 14, 2008; Worksession held June 25, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, August 14, 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 variances from Sections 59-C-1.326(a)(C)(4), 59-C-1.326(a)(2)(B), and 59-C-1.326(a)(1). The petitioner proposes the construction of an accessory structure/detached garage that requires variances of: (a) five (5) feet as it is within one (1) foot of the side lot line setback; (b) three (3) feet as it is with two (2) feet of the rear lot line setback; and (c) for the accessory structure to remain in the front yard. The required side lot line setback is six (6) feet; the required rear lot line setback in five (5) feet; and accessory structures are to be located in the rear yard only.

Ms. Radi, the property owner, was represented by Stuart Barr, Esquire, at the public hearing. Ali Shakiri, a structural engineer, Thomas Radi, her father, and Karen Masulla, an adjoining neighbor, provided testimony at the public hearing.

The subject property is Lots 20, 21, 22, Block L, Crestview Subdivision, located at 4808 Crescent Street, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00478214).

Decision of the Board: Requested variances **DENIED.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 13.6 x 25 foot accessory structure/detached garage.
2. Mr. Barr stated that the original variance request was for three variances, which were from the side lot line setback, the rear lot line setback and for the accessory structure to be located in the front yard. Mr. Barr stated that the Department of Permitting Services (DPS) rescinded the variance requirement for the accessory

structure to be located in the rear yard only. See Exhibit Nos. 14 [email from Gregory McClain dated 4/9/08] and 15 [email from Stuart Barr dated 4/9/08].

3. Mr. Radi testified that the subject property is a corner lot located at the intersection of Earlston Drive and Crescent Street. Mr. Radi testified that the subject property is 6,000 square feet. Mr. Radi testified that the lot adjoins an alley that he described as abandoned at its western boundary and that the alley serves as a driveway for the subject property via Earlston Drive. See Exhibit Nos. 4(a) [site plan] and 11 [zoning vicinity map].
4. Mr. Radi testified that his daughter and son-in-law bought the subject property from him in late 2006 or early 2007. Mr. Radi testified that on a visit to the subject property after the sale, he observed that the walls of the existing detached garage had cracked, eroded and buckled. Mr. Radi testified that the detached garage is located at the bottom of a steep hill and that the structure receives the water from the hill.
5. Mr. Radi testified that he attempted to repair the wall of the existing garage, but that he was advised by a mason that a repair was not possible. Mr. Radi testified that the old garage was unsafe and that it was removed and replaced with that a new structure at the same location. Mr. Radi testified that the uniqueness of the subject property is its topography and that the alley effectively extends the subject property some 9½ feet at the rear of the lot.
6. Mr. Radi testified that many of the neighbors in the immediate neighborhood have integrated a portion of the abandoned alley into their lots. The record contains County Council Resolution No. 8-1019 dated September 14, 1976, that states in part:
 - “1. The County Council hereby finds that a portion of alley through Block L in Crestview, as petitioned for abandonment is no longer need for present or future public use.
 2. Pursuant to Section 49-62 of the Montgomery County Code (1972 Edition as amended), the County Council hereby abandons the portion of alley located between Lots 34, 35 and Lots 9, 10 in Block L of Crestview Subdivision as dedicated to public use on Plat Book 3, Plat No 213; subject to preparation of a further Plat to assemble land accruing from the abandoned portion of public way with the abutting properties at no cost to the County.” See Exhibit Nos. 10(a) [Montgomery County Council Resolution No. 8-1019 dated 9/14/79] and 10(b) [detail map].
7. Mr. Shakiri testified that there is a 5 to 6 foot drop in elevation to the petitioner’s lot from adjoining Lot 46. Mr. Shakiri testified that the subject property is unique because the adjoining lot has a structure that is very, very close to the property line. Mr. Shakiri testified that at least a 7-foot retaining wall would be required to stabilize the topography in the area of the detached garage. Mr. Shakiri testified

that most of the properties in the neighborhood have either a garage or shed in the corner of the property.

8. In response to Mr. Shakiri's testimony, Ms. Masulla questioned why the new garage needed to be closer than the prior garage. Ms. Masulla testified that the prior garage had been at least three feet from the property line and that the new structure is one foot from the property line. Ms. Masulla testified that the petitioner's prior garage was approximately the same size as her garage, but that the new garage is significantly larger. Ms. Masulla testified that she is concerned that the new garage will destabilize her garage. See Exhibit Nos. 21(a) [garage at 4808 Crescent Street] and 21(c) [view of accessory building and rear of 4808 Crescent Street].
9. In response to questions from the Board, Ms. Masulla testified that the topography on her lot has a slight slope but that it is not significant and that the drop in topography is only on the petitioner's lot. Ms. Masulla testified that the topography at the front of her lot slopes downward to the street.
10. Mr. Barr argued that the uniqueness of the subject property is that it is a corner lot, its existing topographical conditions, its close proximity to the abandoned alley, and the need to stabilize the detached garage because of safety concerns. Mr. Barr argued that these conditions disproportionately impact the subject property.
11. The record closed on May 14, 2007, but was held open to permit the record to be supplemented with additional evidence regarding the abandonment of the alley behind the petitioner's property. The Board received a letter dated June 17, 2008, from Stuart Barr. See Exhibit No. 22 [letter from Stuart Barr dated 6/17/08]. Mr. Barr's letter included Docket No. AB-371, Report and Recommendation from Robert A. Passmore of the Department of Transportation, In The Matter of Abandonment of Alley in Crestview. Public Hearing held on May 18, 1976. Hearing Officer's Report and Recommendation.

In accordance with Executive Order No. AB-07-06, a public Hearing was held on May 18, 1976 to consider a petition submitted by Lorraine R. Moritz seeking the abandonment of a portion of alley abutting Lots 34 and 35, Block L, located in Crestview subdivision. The hearing record is comprised of a 32 page transcript together with numerous exhibits.

The Hearing Examiner recommended approval for the abandonment of the portion of alley located between Lots 34, 35 and Lots 9, 10 in Block L of Crestview Subdivision." See Exhibit No. 22(c) [AB-371 Hearing Examiner's Report and Recommendation].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do 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 not constrained by either its shape or its dimensions and that the lot has no exceptional topographical or other extraordinary conditions that are peculiar to the property. The Board finds that the subject property meets the standard lot size for the R-60 Zone. The Board finds that the record contains no information to support the petitioner's assertion that the portion of the alley adjoining petitioner's lot has been abandoned¹ and the fact that the subject property adjoins an alley is not an exceptional circumstance, but a characteristic of the neighborhood.

The Board finds that the difference in grade between the petitioner's lot and the adjoining lot does not constitute a "condition peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variances. The Board notes that the uniqueness of the subject property for the purposes of evaluating the petition for a variance does not refer to the extent of the improvements on the property or the location of structures on the subject lot or on any adjoining properties. Accordingly, the location of any existing improvements on the subject property are not factors that the Board can take into account in evaluating the petition for a variance. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (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 variances of five (5) feet from the required six (6) foot side lot line setback and of three (3) feet from the required five (5) foot rear lot line setback for the construction of an accessory structure/detached garage are denied.

¹ The Board notes that the requested abandonment addressed only the portion of the alley between Lots 34 and 35.

The Board adopted the following Resolution:

Wendell M. Holloway moved to grant the requested petition. The motion did not receive a second.

On a motion by David K. Perdue to deny, seconded by Catherine G. Titus, with Allison Ishihara Fultz, Chair, in agreement, and with Wendell M. Holloway, in opposition, 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 14th day of August, 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.