

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6262**

**PETITION OF MARK AEBIG**  
(Hearing held October 1, 2008)

**OPINION OF THE BOARD**  
(Effective date of Opinion, December 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 variances from Section 59-C-1.323(b)(2). The petitioner proposes the construction of a carport that requires a variances of eight and nine tenths (8.9) feet as it is within 16 and one tenth (16.1) feet of the rear lot and of ten and twelve hundredths (10.12) feet as it is within sixteen and one tenth (16.1) feet of the front lot line. The required rear lot line setback is twenty-five (25) feet and the required established front building line is thirty-three and twenty-two hundredths (33.22) feet.

Bruce Griswold of Insulators Home Exteriors provided testimony and Keith Rosa, Esquire, represented the petitioner at the public hearing.

The subject property is Lot 5, Block 5, Bel Pre Woods Subdivision, located at 4501 Dabney Drive, Rockville, Maryland, 20853, in the R-90 Zone (Tax Account No. 01385970).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a 24 x 20 foot carport.
2. Mr. Rosa stated that subject property is an oddly-shaped, corner lot at the intersection of Dabney and Blackmon Drives. Mr. Rosa stated that the lot's shape coupled with being a corner lot narrows to a cone like shape at its northern boundary. Mr. Rosa stated that the petitioner's lot is surrounded by lots that are square and rectangular in shape. The subject property is 10,067 square feet in size. See Exhibit Nos. 4(a) [site plan with EBL calculations] and Exhibit 10 [zoning vicinity map].

3. Mr. Rosa stated that the application of the required setbacks to the petitioner's lot results in a smaller buildable envelope than on the four lots used in the EBL calculation [Lots 8, 9, 10, 11]. Mr. Rosa stated that the subject property has the smallest buildable area with the application of the EBL of 28%, the four other lots buildable area ranges from 40% to 42%. See Exhibit No. 13 [buildable area calculation].
4. The petitioner testified that his house is sited diagonally on the lot, with the front door of the house oriented toward the intersection of Dabney and Blackmon Drives. The petitioner testified that carport would provide safety for his vehicles and a covered walkway to the house. The petitioner testified that the area chosen for the carport is where the lot has the most space and where the property's existing driveway is located.
5. Mr. Griswold testified that the design of the garage is to accommodate the lot's unique shape. Mr. Griswold testified that the proposed structure will be compatible with the existing architectural design of the house.
6. Mr. Rosa stated that the petitioner's limited rear yard is a result of the lot's unusual shape and that the lot's buildable area is smaller than the other lots that surround the subject property. Mr. Rosa stated that the lot's characteristics preclude locating the proposed carport at another site on the lot and that the proposed location will be the best fit on the lot.

### **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 while the shape of the petitioner's property is distinctive, any "uniqueness" or "peculiarity" caused by such shape does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variances. The Board notes that the shape of the lot does not preclude its development and that the lot exceeds the minimum lot size for the zone.

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 eight and nine tenths (8.9) feet from the required twenty-five (25) foot rear lot line setback and of ten and twelve hundredths

(10.12) feet from the required thirty-three and twenty-two hundredths (33.22) foot established front building for the construction of a carport are **denied**.

The Board adopted the following Resolution:

On a motion by Catherine G. Titus, seconded by David K. Perdue, with 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.

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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 December, 2008.

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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.