

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6285

PETITION OF SHELLY SHAPIRO

(Hearing held March 11, 2009)

OPINION OF THE BOARD

(Effective date of Opinion, April 2, 2009)

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-1.331(b). The petitioner proposes the construction of a screened porch that requires a variance of eight (8) feet as it is within twelve (12) feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

Daryl Shapiro, the petitioner's husband, and Michael Pacylowski of Pro-Built Construction, Inc., provided testimony at the public hearing.

The subject property is Lot 34, Block H, Willows of Potomac Subdivision, located at 10221 Sweetwood Avenue, Maryland, 20850, in the R-200/TDR Zone (Tax Account No. 03012185).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 33 x 16 foot one-story screened porch.
2. The petitioner testified that his property has no neighbors at its rear yard boundary and that his home is one the few homes in his community that backs up to a densely, wooded conservation area. The petitioner testified that the subject property has an existing deck and that the use of the existing deck is severely limited because of its close proximity to the wooded area. The petitioner testified that the wooded area attracts bees and mosquitoes. The petitioner testified that this close proximity is not shared with the neighboring homes and that the proposed construction would permit greater use of this area of the property. See Exhibit Nos. 4 [site plan] and 9 [zoning vicinity map].

3. The petitioner testified that the screened porch, as proposed, would have removable screens. The petitioner testified that the screened porch had received a building permit, but that upon application to his homeowners association, the association questioned whether the proposed structure would be considered an open porch or a closed porch. The petitioner testified that upon consultation with the Department of Permitting Services (DPS), the proposed structure would be considered a closed porch and subject to a twenty foot rear yard setback.
4. Mr. Pacylowski testified that the conservation area at the rear of the petitioners' home is owned by the Maryland-National Capital Park and Planning Commission (M-NCPPC). Mr. Pacylowski testified that it is the petitioners' desire to build an open porch with either screens or shades.

FINDINGS OF THE BOARD

Based upon the petitioners' 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 petitioners' lot has no exceptional topographical or other exceptional conditions peculiar to the subject property and that the petitioners' lot is consistent in size and shape with most of the lots in their immediate neighborhood. The Board finds that the subject property adjoins a wooded, conservation area and that this characteristic is shared with approximately seven other properties in the neighborhood.

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 eight (8) feet from the required twenty (20) foot rear lot line setback for the construction of a screened porch is **denied**.

The Board adopted the following Resolution:

On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Walter S. Booth and Catherine G. Titus, 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.

Catherine G. Titus
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 2nd day of April, 2009.

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.