

**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-6304

PETITION OF FRANK AND MARGARET SANDOVAL
(Hearings held December 16, 2009 and January 6, 2010)

OPINION OF THE BOARD
(Effective date of Opinion, February 5, 2010)

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)(1). The petitioners propose the construction of an accessory structure/swimming pool in the side yard. Section 59-C-1.326 requires accessory structure to be located in the rear yard only.

The subject property is Lot 84, Block A, Spring Garden Estates Subdivision, located at 25022 Oak Drive, Damascus, Maryland, 20872, in the R-200 Zone (Tax Account No. 03133926).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 36 x 18 foot accessory structure/swimming pool in the southwest section of the subject property.
2. The petitioners testified that the subject property is adversely impacted by the established building line and that the property to the east of their lot [Lot 83] was used as the basis for the calculation of the established building line. The petitioners testified that their lot is uniquely shaped and that it is narrower and shallower than other lots in their neighborhood. The petitioners testified that the houses on the neighboring lots are sited deep within those lots and that the property owners are able to utilize more of their buildable envelope. The petitioners' lot is 20,049 square feet. See Exhibits Nos. 4 [site plan], 5(a) [rendered site plan] and 9 [zoning vicinity map].
3. The petitioners testified that they constructed a deck at the rear of their house and that the Department of Permitting Services (DPS) considers the existing deck a permanent structure. The petitioners testified that per DPS' calculations, the dimensions of his rear yard start at the end of the existing

deck, not from the house, and extend to the rear lot line boundary. See Exhibit No. 12 [DPS' rear yard for accessory structures].

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 conditions peculiar to the subject property. The Board finds that the subject property is a rectangular-shaped lot that meets the minimum lot size for the R-200 and that it is similar in size and shape to Lot 83 which adjoins the petitioners' lot at its eastern boundary. The Board notes that the uniqueness of a 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 lot. 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. See, *Montgomery County, MD v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006).

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 to permit an accessory structure/swimming pool in the side yard is denied.

The Board adopted the following Resolution:

On a motion by David K. Perdue, seconded by Catherine G. Titus, Chair, with Walter S. Booth, in agreement, and with Stanley B. Boyd, in opposition, and with Carolyn J. Shawaker, in abstention, 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
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 February, 2010.

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.