

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

Case No. A-6534

PETITION OF NEAL AND BETH ATWELL

OPINION OF THE BOARD

(Hearing Date: September 6, 2017)

(Effective Date of Opinion: September 15, 2017)

Case No. A-6534 is an application by Neal and Beth Atwell (the "Petitioners") for a variance from the requirement in Section 59-4.3.4.B.2.d of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioners wish to locate a single story garage on their property forward of the rear building line.

The Board of Appeals held a hearing on the application on September 6, 2017. The Petitioners, who own the subject property, appeared at the hearing pro se.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 7, Brighton Highlands Subdivision located at 422 Brighton Dam Road, Brookeville, MD, 20833, in the RC Zone.
2. The subject property is a 2.21 acre pipestem lot, improved with a single family home. The topography lines on Exhibit 4(c) show that the rear (southern) portion of this property contains a significant slope. The Petitioners are proposing to construct a 30' by 40' single story garage to the west of their home, with roughly half of the structure forward of the rear building line. Petitioner Neal Atwell testified at the hearing that they have not decided on the design of the proposed garage, and that Exhibit 9(b) was only intended to show what a single story garage might look like. See Exhibits 3, 4(a)-(c), and 9(b).

3. The Petitioners' variance application states that the proposed structure cannot be placed entirely behind the rear building line because of the location of the septic field. See Exhibit 1.
4. The Justification Statement submitted with the variance application amplifies the assertion that the accessory structure cannot be placed in accordance with the Zoning Ordinance because of the location of the septic tank and fields, as follows:

Petitioners seek to construct an accessory building west of the home and forward of the rear building line. The Accessory Structure cannot be placed behind the rear building line because of the location of the Septic Tank and Septic Fields.

* * * * *

The property was purchased by the Petitioners in December, 2016. The septic field existed on the property in its current location since 1988. The location of the septic field and septic tank prevents the Petitioners from constructing the Accessory Structure rear of the building line. Petitioners are not responsible for the location of the septic field or septic tank.

* * * * *

Without the variance, Petitioners will have a substantial deprivation of use of their property. Placing an Accessory Structure behind the rear building line is not possible due to the location of the septic tank and field.

See Exhibit 3.

5. With respect to the impact of the proposed accessory structure on neighboring properties, the Justification Statement states that:

The Accessory Structure will be located approximately 39 feet from the front property line and 19 to 21 feet from the side property line, well within the set back requirements. Part of the Accessory Structure will be forward of the rear building line.

* * * * *

The Accessory Structure has a row of mature trees behind it and will not impact the adjacent property. The property is secluded and placing the Accessory Structure partially in front of the rear building line will not interfere with the general scheme of the neighborhood.

* * * * *

Trees screen the Accessory Structure from adjoining properties. The Accessory Structure will not be adverse to the use and enjoyment of abutting or confronting properties.

See Exhibit 3.

6. At the hearing, Petitioner Beth Atwell testified that there are actually two septic tanks immediately behind their home, on the corners, and that the tanks and

attendant septic fields extend across the entire rear of their property. See Exhibit 4(c). Petitioner Neal Atwell testified that the County requires a ten (10) foot setback around septic tanks and fields, and that because of this, they are seeking to slide the proposed garage forward on the property about 20 feet so that it would not be in this setback. Petitioner Beth Atwell clarified that the proposed garage would be only partially in front of the rear building line, as needed to avoid the required setback. She testified that there was no other location behind the rear building line of the property to locate the proposed garage because of the septic fields. She further testified that the garage would not be visible from the road, and that it would have no adverse impact on surrounding properties.

FINDINGS OF THE BOARD

Based on the Petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is encumbered by two septic tanks and attendant septic fields which sit immediately behind the existing home and extend across the rear yard. The Board finds that the location of these tanks and fields, coupled with the required setback around septic fields, restricts the buildable area in the rear yard, and thus limits the ability of the Petitioners to locate the proposed garage behind the rear building line of their home. The Board notes that the southern (portion (rear)) of the property is also encumbered with a significant slope. The Board finds that these conditions constitute unusual or extraordinary circumstances peculiar to the subject property.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property last year, long after the existing septic tanks and septic fields were established. Thus there is no evidence in the record to suggest that the Petitioners created the special circumstances pertaining to the property.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the location of the existing septic tanks and septic fields, coupled with the topography on the southern (rear) portion of this property, limits the ability of the Petitioners to wholly locate an accessory structure behind the rear building

line of the principal structure (house), creating a practical difficulty for the Petitioners. The Board finds that the requested variance, to allow a portion of the proposed garage to be located in front of the rear building line as shown on Exhibit 4(a), is the minimum necessary to overcome the practical difficulties imposed by compliance with the locational restrictions of the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of this accessory structure continues the residential use of the home, and is consistent with the recommendations of the Olney Master Plan.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

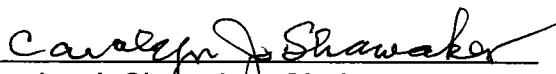
The Board notes that, per the Justification Statement and Zoning Vicinity Map, the property is secluded, and accordingly the Board finds that placing the Accessory Structure partially in front of the rear building line will not interfere with the general scheme of the neighborhood. Per the Justification Statement, the Board finds that the proposed garage will be screened by trees, and so will not be adverse to the use and enjoyment of abutting or confronting properties. This is consistent with the testimony of Petitioner Beth Atwell, who testified that the proposed garage would not be visible from the road and would not have an adverse effect on neighboring properties.

Accordingly, the requested variance to allow an accessory structure/single story garage to be located in front of the rear building line is **granted**, subject to the following condition:

1. Petitioners shall be bound by their testimony and exhibits of record.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Bruce Goldensohn, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Edwin S. Rosado 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.


Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for

Montgomery County, Maryland
this 15th day of September, 2017.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. 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 a 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.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.