

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5608

PETITION OF JULIE BILLINGSLEY AND JOHN MCNEIL
(Hearing held June 27, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, August 21, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of Chap. 59, Mont. Co. Code 1994, as amended (the Zoning Ordinance) for variances from Sections 59-C-1.326(a)(2)(b) and 59-C-1.326(a)(2)(c) of the Zoning Ordinance. The petitioners propose to construct a shed that requires a three (3) foot variance as it is within two (2) feet of the rear lot line and a variance of three (3) feet as it is within two (2) feet of the side lot line. The required rear lot line setback is five (5) feet and the required side lot line setback is five (5) feet.

The subject property is Lots 21 and 22, Block G, located at 4909 Chevy Chase Boulevard, Chevy Chase, Maryland, in the R-60 Zone, (Tax Account No. 475778).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner testified that he proposes to construct a shed in the southwest corner of his rear yard and that the shed would be located two feet from the rear and side property lines.
2. The petitioner testified that the proposed shed would be built on a concrete slab and would be approximately 10 x 18 feet , which is a standard size of many garages.
3. The petitioner testified that the root system of a healthy, 60 year-old, silver maple tree would be damaged if the shed were built using the required five foot setbacks from the southwest property lines. The petitioner testified that the shed could not be constructed in the southeast corner of the property without jeopardizing a mature dogwood tree. See, Exhibit No. 3.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances for the proposed shed must be denied. The requested variances do not comply with the applicable standards set forth in Section 59-G-3.1(a) and (b) 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 applications of these regulations would*

result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

1. The existence of a mature silver maple tree may be a condition which is peculiar to this property, but it is not a condition which would restrict new construction to only the southwest corner of the property. And, any “uniqueness” or “peculiarity” caused by the location of the silver maple tree would have no relationship to the need for a variance in the southeastern corner of the lot. The southeastern corner of the property is a buildable area in spite of the existing dogwood tree.
2. The Board finds that the existence and location of a dogwood tree does not result in an exceptional or extraordinary circumstance that would result in practical difficulties or an undue hardship upon the petitioner. The Board finds that if shed were shifted on the lot, that the construction of a shed could occur without the necessity of a variance.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the 10 x18 feet dimensions of the shed is not the minimum reasonably necessary and that the size of the structure is more akin to a garage than a shed.

Since the petition does not meet the requirements of Section 59-G-1.3(a) and (b), the Board finds that it does not need to consider the other requirements for granting a variance. Accordingly, the requested variances of 4.30 feet from the required five (5) foot side lot line setback and of 5.30 feet from the required six (6) foot side lot line setback for the construction of a shed are denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the foregoing Resolution. Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
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 21st day of August, 2001.

Katherine Freeman
Executive Secretary to the Board

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.