

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5572

PETITION OF SCOTT R. STIGER AND ANITA M. STIGER

(Hearing held on May 2, 2001)

(Hearing on Reconsideration held December 5, 2001)

OPINION OF THE BOARD ON RECONSIDERATION

(Effective date of Opinion, March 21, 2002)

This proceeding is a petition filed pursuant to Section 59-A-4.11(b) of the Zoning Ordinance, Chapter 59, Montgomery County Code, 1994 (as amended) for a variance from Section 59-C-9.545(b)(1). That section requires a side yard setback for an accessory structure of fifteen (15) feet.

The subject property is Lot 5, Block H, Ancient Oak North subdivision, located at 13128 Colton Lane, Darnestown, Maryland, in the RC Zone (Tax Account No. 00407902).

THE PROCEEDINGS

The petitioners originally sought a variance of thirteen (13) feet for an existing shed as it has been constructed within two feet of the side lot line. The petitioners subsequently amended their request to seek a variance of ten (10) feet, proposing to move the existing shed back to within five (5) feet of the side lot line.

The initial public hearing in this matter was held on May 2, 2001. At that hearing the Board denied the requested variance and issued a Resolution with an effective date of July 26, 2001. Thereafter, pursuant to Paragraph 10 of the Board's Rules of Procedure (County Council Resolution No. 12-865, adopted October 27, 1992) the petitioner requested reconsideration of that Resolution through a letter dated August 9, 2001. The Board considered the petitioner's request at its work session held September 19, 2001. After an appeal to the Circuit Court of the Resolution and a consent remand back to the Board, the Board then granted the request for reconsideration and rehearing.

On December 5, 2001, a public hearing was held on the Petitioner's request for reconsideration.

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners had previously constructed a 12 by 12 foot shed, 16 to 18 inches off the side property line, in the rear yard (Transcript of Testimony (Tr.), page 8, 5/2/01).

2. Although the originally requested variance was for thirteen (13) feet, the petitioner amended that request to ten (10) feet at the initial hearing (Tr., page 5, 5/2/01) and restated that request at the hearing on reconsideration (Tr., page 4, 12/5/01).

3. At the reconsideration hearing the petitioner submitted additional photographs (Exhibit 28). Further, the petitioner submitted additional information regarding the location of his septic field (Exhibit 29). The exhibit relating to the location of the septic field showed the septic field itself, the setback area for the septic field, and the open space located in the rear of the property. That open space was illustrated by the petitioner in his photographs (See, Exhibits 28-15).

4. The petitioner again argued that his lot was exceptionally narrow, that drainage concerns caused the need to locate the shed where the petitioner proposed; that trees would need to be cut down if he was forced to conform to the setback requirements; and that the location of his septic system was an extraordinary situation (Tr., page 19, 12/5/01).

5. The record was also supplemented with Exhibit 30, a second letter of opposition from Angelo and Carol Ann Puglise, the adjoining neighbors on Lot 6, who restated their objection to the requested variance.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony, and the evidence presented to the Board on May 2, 2001, and December 5, 2001, the Board finds that the variance must be denied. The requested variance does not comply with the applicable requirements 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 application 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 Board adopts and reaffirms its findings from its Resolution of July 26, 2001. In particular, the Board finds that the petitioners' lot is not exceptionally narrow as argued by the petitioner as it is similar in shape and size to the neighboring property (see, Zoning Vicinity Map, Exhibit 9).

2. The Board finds that the drainage across the petitioners' property is sheet flow drainage from one side to the other. The Board finds that the actual construction of the shed, as well as the proposed construction, deals with drainage by allowing water to run under it. Further, the topography is not "exceptional" but shows gradual drainage across the petitioners' lot to a swale that carries any drainage off-site.

3. The Board finds that the additional information with regard to the septic field and its setbacks does not provide any zoning reason for the grant of the variance. First, the existence of the septic field is not an "extraordinary situation or condition peculiar" to the petitioners' property, nor does the location of the septic field or its setback area hamper the petitioners' ability to construct a shed in their rear yard.

4. The petitioners' photographs indicate that trees had previously been removed from the rear yard (Exhibits 28-11 and 28-12). The Board had found previously, and readopts its finding, that the vast majority of trees in the petitioners' rear yard appear to be newer growth trees and do not create a zoning reason for granting the variance.

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

The Board finds that the proposed location of the shed, five (5) feet from the petitioners' property line, is not the minimum reasonably necessary, even if the Board had found any applicable exceptional conditions. The petitioner originally proposed moving the shed from its existing location to two (2) feet from the side lot line. The petitioner now proposes to move the shed five (5) feet from the side lot line. The fact that the petitioner is able to move the shed, whether two feet or five feet, means the petitioner can move the shed into a position of compliance in his rear yard.

CONCLUSION

The Board is mindful of the admonition Judge Cathell, then of the Court of Special Appeals, in *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995), that "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." In *Carne v. City of Baltimore*, 201 Md. 130, 136 (1952) the Court of Appeals went further stating:

The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance (citation omitted).

In this action, the petitioner has failed to demonstrate anything unique or peculiar about his property, has failed to prove the requisite hardship or need outside of his personal convenience, and has failed to establish that the variance requested is the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-3.1(a) and (b) and, therefore, the Board does not consider the other requirements set forth in that section relating to the grant of a variance. Accordingly, the requested variance of ten (10) feet from the required fifteen (15) foot side lot line setback is hereby **denied**.

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.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing 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 March, 2002.

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.