

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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([www.co.mo.md.us/council/board/html](http://www.co.mo.md.us/council/board/html))

**Case No. A-5795**

**PETITION OF JEHAN PASHA SALEH**

(Hearing held September 11, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, October 10, 2002)

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 petitioner proposes to construct an accessory structure (garage) in the side yard that requires a variance. Section 59-C-1.326 requires accessory structures to be located in the rear yard only.

Peter Pasha Saleh, the petitioner's father, represented for the petitioner at the public hearing.

The subject property is Parcel 18, Block K, Woodhaven Subdivision, located at 8305 Woodhaven Boulevard, Bethesda, Maryland, in the R-90 Zone (Tax Account No. 160700631042).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct a 14 x 24 foot garage in the northern side yard.
2. Mr. Saleh testified that the structure could not be built in the rear yard because of the existing 100-year-old trees and that new construction in this area would require the trees' removal. Mr. Saleh testified that large, mature trees are a characteristic of the neighborhood.
3. Mr. Saleh also testified that new construction in the rear yard would not be in harmony with the neighbors' use of their rear yards.
4. The record contains a letter from Karen Schneider and Marc Gunther. The Schneider/Gunther letter states that the proposed addition would impact the use and enjoyment of their home and that the garage, if constructed, would be 5 feet from the property line.

## **FINDINGS OF THE BOARD**

Based upon the 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 petitioner's property has no unusual topographical or other conditions that are peculiar to the property and that the lot is similar in shape and size to the neighboring and adjoining properties in the general neighborhood. See, Exhibit No. 9.

The Board notes that the existence of large, mature trees is a characteristic shared with all of the other properties in the general vicinity.

The petition does not meet the requirements of Section 59-G-1.3(a) above and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance to construct an accessory structure/garage in the side yard is denied.

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 Donna L. Barron, with Angle M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

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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 10th day of October, 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.