

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No.A-6137

PETITION OF BRIAN D. KEELER
(Hearing held June 7, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, September 7, 2006)

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)(2)(C). The petitioner proposes the construction an addition to an existing accessory structure/detached garage that requires an eleven (11) foot variance as it is within one (1) foot of the side lot line. The required setback is twelve (12) feet.

Shawn Whittaker, Esquire, represented the petitioner at the public hearing. Martin Hutt, Esquire, represented Heller Properties, LLC, an adjoining neighbor, at the public hearing.

The subject property is in Snowdens Manor Enlar Subdivision, located at 35 Old Bonifant Road, Silver Spring, Maryland, 20905, in the R-200 Zone (Tax Account No. 00254053).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of an addition to an existing detached garage.
2. Mr. Whittaker stated that the petitioner purchased the property in 1986. Mr. Whittaker stated that a dilapidated carport existed at the time of the petitioner's purchase and that the petitioner demolished and reconstructed that carport on the same foundation. Mr. Whittaker stated that the property is unique because prior to purchase by the petitioner, the lot had an existing house and a detached garage, which met the zoning requirements. Mr. Whittaker stated that house on the

subject property has been relocated as a result of the property being redivided and subdivided. See Exhibit No. 4 [site plan].

3. Mr. Whittaker stated that the garage and carport, with their current dimensions could not be located elsewhere on the property without the need for a variance. Mr. Whittaker stated that the detached garage already has a close proximity to the existing paved area, the driveway and access to the property.
4. The petitioner testified that the subject property is made-up of two separate pieces of land, with the dwelling sited on the land located to south, and the garage located on the land located to the north. The petitioner testified that the lot is unique because of the configuration of these two pieces of land that make up the property. The petitioner testified that the subject property is approximately 40,000 square feet. See Exhibit No. 15 [zoning vicinity map].
5. Mr. Hutt stated that Parcel 615 is the Heller property, a portion of the lot faces Bonifant Road, and a portion of the lot faces New Hampshire Avenue. Mr. Hutt stated that the adjoining neighbor is concerned about the use and enjoyment of his property given the placement of the carport as an addition to the garage, the two proposed carport ceiling light fixtures, and an attic light fixture. Mr. Hutt stated that the adjoining neighbor is also concerned about the planned activity in the carport, about the number of cars in and out of the structure, and the lights that will be on at night given the carport's close proximity to the boundary of the properties. Mr. Hutt stated that the proposed addition will have an adverse impact on the adjoining neighbor's use and enjoyment of his property.
6. Mr. Whittaker stated that the structures, the septic tank, the driveway and the trenches existed when the petitioner purchased the property and that the petitioner's efforts have been to maintain and improve the conditions of the lot. Mr. Whittaker stated the property is unique in the way it was purchased, the lot's configuration and that the addition could only be located at its proposed location.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 although the subject property does have a slightly trapezoidal shape, the property is a large, regularly-proportioned, rectangular shaped lot that is two times the minimum lot size for the zone. The Board finds that the size of the property could accommodate the proposed construction elsewhere on the lot without the need for a variance.

The Board finds that the improvements made to the subject property do not meet requirements of the zoning ordinance for the grant of a variance and do not constitute “conditions peculiar to a specific parcel of property” of such a severity that the Board may grant the requested variance.

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 of eleven (11) feet from the required twelve (12) foot side lot line setback for the construction of an addition to an existing accessory structure/detached garage is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, 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.

Allison Ishihara Fultz
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 7th day of September, 2006.

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.