

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6552

PETITION OF LEONARD ROMANO

OPINION OF THE BOARD
(Hearing Held April 18, 2018)
(Effective Date of Opinion: April 26, 2018)

Case No. A-6552 is an application by Leonard Romano (the "Petitioner") for a variance from the requirement in Section 59-4.4.4.B.2.c of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioner wishes to locate a detached garage on his property forward of the rear building line.

The Board of Appeals held a hearing on the application on April 18, 2018. The Petitioner, who owns the subject property, appeared at the hearing with his architectural designer, Colleen Stone.

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

EVIDENCE PRESENTED

1. The subject property is Lot 10 and P9, Block A, Avery Village Subdivision, located at 15808 Amelung Lane, Derwood, MD, 20855, in the RE-2 Zone. It is improved with a single family home.
2. The subject property is a 3.57 acre pipestem lot located on the west side of a cul-de-sac at the end of Amelung Lane. The pipestem portion of the property is narrow and leads west from the street to the existing home. The balance of the property, which surrounds the home, is much wider (north-south) than it is deep (east-west). The Petitioner's Statement describes the property as follows:

The lot is a long thin lot and the house is set back against the 50 B.R.L. leaving a shallow back yard that has a 12' high swale running thru the center of the yard. The shallowness of the back yard, with the swale running right thru the

required location for the garage making it an improbable location. Re-grading the swale would require it to be shifted onto the adjacent park property, which we feel is an unlikely scenario.

See Exhibits 3 and 4(a).

3. The Statement makes clear that the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail, as follows:

The shifting of the garage 22' forward of the rear edge of the house, gets it out of the swale. The garage otherwise meets all other zoning requirements. It would also allow us to maintain all the existing trees and plantings in our back yard and the adjacent park area.

With respect to the impact of granting the requested variance on abutting or confronting properties, the Statement indicates that "[t]he property is behind most of the developments lots and is set back from the street 280' to the front of the property. It would be difficult to determine if the garage was located behind the house or not from the street." See Exhibit 3.

4. At the hearing, Ms. Stone clarified that what is referred to in the Statement as a swale running through the back yard is in fact a berm, which she estimated to be twelve (12) feet high. She testified that if the garage were to be located behind the rear plane of the existing house, the berm would have to be moved, likely onto the abutting park property, which she stated would be difficult. She described the slope behind the property as significant, and testified that there is a "massive" grade change from the rear of the subject property to the front of the house.
5. Ms. Stone testified that the proposed garage would be set back approximately 450 feet from the road, and that standing at the road, it would be difficult for a viewer to ascertain whether the garage was behind the rear building line or in front of that line. She testified that the other houses on the street are all much closer to the actual street, and that the subject property is set 450 feet behind the rest of the neighborhood, abutting a park. See Exhibit 7(a).
6. The Statement indicates that Petitioner purchased the property in 1980, and that "the home was already built and the swale was already in existence." See Exhibit 3. At the hearing, the Petitioner testified that the berm existed when he purchased the property.

FINDINGS OF THE BOARD

Based on the binding testimony of Ms. Stone and of the Petitioner, and based on 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, based on the testimony of record and Exhibits 3 and 4(a), that the usable area of the subject property is shallow in depth relative to its size, and that the area behind the existing house, which would otherwise be available for the location of a detached garage, is particularly constrained, and is encumbered by a significant slope and berm. 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 Board finds, based on the testimony of record and Exhibit 3, that the Petitioner is not responsible for the location of this house on the property or for the existence of the slope and berm behind the house. Thus the Board finds that the special circumstances pertaining to the property are not the result of actions by the Petitioner.

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 house on this property, which causes the subject property to have a relatively shallow rear yard for its size, coupled with the existence of the berm and the significant slope from the rear yard to the front of the house, limits the ability of the Petitioner to locate an accessory structure behind the rear building line of the principal structure (house), creating a practical difficulty for the Petitioner. The Board finds that the requested variance, to allow the construction of the proposed garage 22 feet 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 thus can be granted without substantial impairment to the intent and integrity of the applicable 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, per the testimony of record and Exhibits 3 and 7(a), that the subject property is a pipestem lot located behind the other homes in the neighborhood. The Board further finds that the proposed garage will be approximately 450 feet from the street and, per the Statement, a person viewing the garage from the street will not be able to tell is the structure is located behind or in front of the rear building line. In addition, the Board notes that the subject property backs to parkland, and that allowing construction of this structure in front of the rear building line has the effect of moving it farther away from the parkland. Accordingly the Board finds that placing the proposed garage in front of the rear building line, as shown on Exhibit 7(a), will not be adverse to the use and enjoyment of abutting or confronting properties.

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

1. Petitioner shall be bound by their testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

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



 John H. Pentecost, Chair
 Montgomery County Board of Appeals

Entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland this 26th day of April, 2018.



 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.