

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5624

PETITION OF MARK RAYFORD
(Hearing held September 12, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, October 11, 2001)

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 variances from Sections 59-C-1.326(a)(1) and 59-C-1.326(a)(2)(c). The petitioner proposes to construct an accessory structure (garage) in the side yard that requires a variance of four (4) feet as it is within eleven (11) feet of the side lot line. The required side lot line setback is fifteen (15) feet and Section 59-C-1.326(a)(1) requires accessory structures to be located in the rear yard only.

Stephen J. Orens, Esquire, and Bruce Hutchinson, the petitioner's architect, appeared on behalf of the petitioner.

The subject property is Lot 31, Block A, Persimmon Tree Subdivision, located at 8506 Country Club Drive, Bethesda, Maryland, 20817-4581 in the RE-2 Zone. (Tax Account No. 02909193).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a detached, two-story, two-car garage in the eastern side yard.
2. The property is a triangular shaped lot that fronts on Country Club Drive. Country Club Drive is a curving road that moves inward along the front of the petitioner's lot. See, Exhibit No. 10.
3. The petitioner testified that the topography of the lot drops approximately 10 feet at its western boundary and that also located in the western side yard is a stormwater drain. A fence encloses a portion of the usable area in the petitioner's rear yard. The property backs up to the Congressional Country Club.
4. Mr. Hutchinson testified that the unique shape of the lot restricts the access and the use of the property's rear yard and that the rear yard slopes downward to a swamp-like area. Mr. Hutchinson testified that the

proposed garage would be similar in design and size to other existing garages in the immediate neighborhood.

5. Kim Elliott, the petitioner's wife, testified that the construction plans were shown to their neighbors and that their neighbors expressed no objections to the proposed construction. Ms. Elliott further testified that the living space above the garage will not include cooking facilities.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The variance request complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific piece of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue or exceptional or undue hardship upon, the owner of such property.*

The property is a uniquely shaped triangular lot, with a substantial drop at the property's western boundary. The road curves inward at the front of the petitioners' lot further reducing the front yard of the property. The Board finds that these are exceptional conditions and that the strict application of the regulations would result in practical difficulties for and an undue hardship upon the property owners if the variances were to be denied.

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

The Board finds that the variances requested are the minimum reasonably necessary to overcome the exceptional conditions of the property.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose or integrity of the general plan or the duly adopted and approved area master plan.

- (d) *The proposed construction will not be detrimental to the use and enjoyment of the adjoining or neighboring properties.*

The Board finds that the property's sloping topography and the dense foliage would screen the proposed garage. The property backs up to the Congressional Country Club.

The record contains no correspondence or testimony in opposition to the variance request and the Board finds that the proposed construction will not

be detrimental to the use and enjoyment of adjoining and neighboring properties.

Accordingly, the requested variances: (1) of four (4) feet from the required fifteen (15) foot side lot line setback, and (2) to permit the construction of the an accessory structure (garage) in the side yard are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses and the representation of their attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

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 titled petition.

On a motion by Angelo M. Caputo, seconded by Donald H. Spence, Jr., Chairman, with Donna L. Barron, Louise L. Mayer and Allison Ishihara Fultz 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 11th day of October, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board may be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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 (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.