

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5943

PETITION OF DAWN BORCHERS

(Hearing held November 26, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, February 6, 2004)

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 Section 59-C-1.9.45(a). The petitioner proposes to construct an accessory structure (detached garage) that requires a variance of five (5) feet as it is within seventy-five (75) feet of the front lot line and a variance to permit the accessory structure be located in the side yard. Section 59-C-45 requires accessory structures to be located in the rear yard only. The required front lot line setback is eighty (80) feet.

Dawn and Robert Borchers attended the public hearing.

The subject property is located at 16413 New Hampshire Avenue, Silver Spring, Maryland, 20905, in the RC Zone (Tax Account No. 00253526).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 32 x 96 foot detached garage in the southern side yard.
2. The petitioners testified that the State Highway Administration (SHA) required that the property's driveway to be located in the southwest section of the lot and that this restricts its usable area.
3. The petitioners testified that the structure could not be located in the rear yard because of the existing septic system and that it could not be located elsewhere on the property without creating drainage problems. The petitioners testified that an addition to the house would also create drainage problems.
4. The petitioners testified that property is screened by trees at the northern and eastern boundaries and that the western boundary will eventually back-up to

a church parking lot. The property is 1½ acres. The petitioners testified that the proposed garage would be used for storage for their antique cars, a boat and a camper.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do 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 petitioners' lot has no exceptional topographical or other conditions not shared with the neighboring and adjoining properties and that their lot is significantly larger than most of the neighboring lots in the immediate area. See, Exhibit No. 7 (zoning vicinity map).

The Board notes that improvements made to address drainage issues on the petitioners' lot do not create a zoning reason for the grant of the requested variances and that uniqueness or peculiarity for purposes of the evaluation of a proposed variance does not refer to the extent of the improvements upon the property. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994).

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

The Board finds that the variances requested for the construction of a detached garage, as proposed, are not the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of five (5) feet from the required eighty (80) foot front lot line setback to permit the construction of an accessory structure/detached garage and to locate the detached garage in the side yard are denied.

The Board adopted the following Resolution:

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

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 6th day of February, 2004.

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.