

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6210

PETITION OF BRIAN E. YEGHER
(Hearing held May 23, 2007)

OPINION OF THE BOARD
(Effective date of Opinion, July 19, 2007)

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)(2)(A), 59-C-9.45, and 59-C-1.31(g)52. The petitioner proposes the construction of an accessory structure/detached garage that requires: (1) a variance of twenty-five (25) feet as it is within forty (40) feet of the front lot line; (2) a variance to permit the accessory structure/detached garage to be located in the side yard; and (3) a variance as the accessory structure/detached garage exceeds the size of the single-family dwelling by 22.87%. The required front lot line setback is sixty-five (65) feet; Section 59-C-1.326(a)(2)(a) requires the accessory structure to be located in the rear yard only; and Section 59-C-1.31(g)52 requires that accessory structures not exceed the size of the single-family dwelling.

John and Kathleen Sheehy, neighbors, appeared in opposition to the variance request.

The subject property is Lot 6, Block 2, Wilson's Subdivision, located at 1900 Norval Road, Silver Spring, Maryland, 20906, in the R-200 Zone (Tax Account No. 00966168).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 38 x 36 foot accessory structure/detached garage.
2. The petitioner testified that his property is large, lopsided lot and that the shape of his lot is unique. The petitioner testified that his lot is located lower than the neighboring lots and that his lot receives the water runoff from the lots above him. The petitioner testified that his property has excessive topography issues and that the lot has a lot of big drops on it. The petitioner testified that the neighboring lots do not

have the same extreme topography that as he has on his lot. The petitioner's lot is 56,663 square feet. See Exhibit Nos. 4 [topographic survey] and 7 [zoning vicinity map].

3. The petitioner testified that the subject property has a creek located in the rear yard and that the location proposed for the garage is to minimize any environmental problems with the creek. The petitioner testified that he has no access to his rear yard because a storm drain is located in one of the side yards and a very large gully in the other side yard. The petitioner testified that the storm drain is located on the common space between his lot and adjoining Lot 7.
4. Mr. Sheehy testified that virtually every lot in the neighborhood has topographical issues of some kind. Mr. Sheehy testified that there is also a stream that runs behind Lot 7 and the lots north of the petitioner's property. Mr. Sheehy testified that the all of the lots on northern side of Norval Road have severe slopes that backup to the stream and do not have garages because of this reason. Mr. Sheehy testified that the construction of the proposed garage would require the removal of a large number of trees and that currently those trees screen his view from the petitioner's lot. Mr. Sheehy testified that the view of the trees would be replaced with a view of the proposed garage. Mr. Sheehy testified that the properties in the neighborhood all share the same topographical conditions and that there is nothing unique about the petitioner's lot.
5. Ms. Sheehy testified that they are not opposed to the petitioner's ability to construct a garage, but that the proposed garage would significantly alter the view from their property and the road.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 subject property has no exceptional topographical or other conditions peculiar to lot and that the topography on the petitioner's lot is a characteristic that is shared

with the other properties in the neighborhood. The Board finds that for purposes of evaluating a petition for a variance that uniqueness or peculiarity of a property does not refer to the extent of the improvements on the property or the location of the house. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1995).

The Board notes that the petitioner's lot is twice the minimum size for the zone.

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

The Board finds that the variances requested for the proposed construction of the accessory structure/detached garage are the minimum reasonably necessary.

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 variances: (1) of twenty-five (25) feet from the required sixty-five (65) foot front lot line setback, (2) to permit the accessory structure/detached garage to be located in the side yard; (3) to permit the accessory structure to exceed the size of the single-family dwelling by 22.87% for the construction of an accessory structure/detached garage for the construction of a screened porch is denied.

The Board adopted the following Resolution:

On a motion by Catherine G. Titus, seconded by Caryn L. Hines, with Donna L. Barron, 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 19th day of July, 2007.

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.