

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6186

PETITION OF STEVEN GEIGER

(Hearings held February 25, 2009 and February 17, 2010)

OPINION OF THE BOARD

(Effective date of Opinion, March 12, 2010)

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-10.2.1.1. The existing accessory structure/storage building requires a variance of 9.8 feet as it is within 2.2 feet of the side lot line and a variance of 8.2 feet as it is within 3.8 feet of rear lot line. The required side lot line setback is twelve (12) feet and the required rear lot line setback is twelve (12) feet.

Michele Rosenfeld, Esquire, represented the petitioner at both public hearing. Alfred Blumberg of Site Solutions Inc. appeared as a witness for the petitioner at the February 17, 2010 public hearing.

The subject property is Parcel 702, located at 19630 Waters Road, Germantown, Maryland, 20874, in the RMX-2 Zone (Tax Account No. 00021150).

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

EVIDENCE PRESENTED TO THE BOARD ON FEBRUARY 25, 2009

1. The existing 40.4 x 120.4 foot accessory structure/storage building requires variances to remain in the southwest section of the subject property.
2. The subject property is located at the intersection of Waters Road and Wisteria Drive. The subject property adjoins an undeveloped property known as the Martens Property at its southern boundary, a property zoned T-S improved with self-storage units at its northwest boundary, a twenty-acre apartment complex its western boundary and at its northeast boundary across Wisteria Drive is a large office complex. The property owner operates a towing company and the existing accessory structure/storage building is used to store vehicles on an interim basis in between the time that vehicles are towed from location to location. The storage

building is 120 feet in width and 40 feet deep. The existing building could not be moved without being completely demolished and reconstructed. See Exhibit No. 4(a) [site plan].

3. The public hearing for the variance request was originally scheduled for April 16, 2008 and later continued to October 8, 2008, and February 25, 2009. Ms. Rosenfeld submitted a letter on February 25, 2009, requesting a continuance of the public hearing to permit the completion of the Germantown Master Plan. The letter states in part: "The Pending Sector Plan Amendment zoning recommendations are designed to facilitate assemblage of the Subject Property into the adjoining Martens property for unified development which, upon implementation, will moot this application entirely because it is highly unlikely that the Storage Building will remain after any such assemblage occurs." The Germantown Master Plan received the District Council Approval on September 22, 2009. See Exhibit No. 16 [letter from Michele Rosenfeld].

EVIDENCE PRESENTED TO THE BOARD ON FEBRUARY 17, 2010

4. The petitioner testified that the subject property is used for a towing and auto transport business. The petitioner testified that the site is also used for the storage of vehicles involved in investigations by the State and County Police. The petitioner testified that the construction for the building was started in 2003 and completed in 2005. The petitioner testified that during the construction of the storage building the County conducted footer, slab and electrical inspections, but that the citations for setback violations were not issued until the completion of the storage building. See Exhibit No. 21 [building permit application].
5. Mr. Blumberg testified that the subject property is surrounded by commercial uses, at its western boundary is an apartment complex, at its northwest boundary is a large storage facility, and across Wisteria Drive is a large office complex. Mr. Blumberg testified that the existing building is sited within the property's southern and western required setbacks. Mr. Blumberg testified that the movement of the existing building would not materially impact the view from the neighboring properties. Mr. Blumberg testified that the subject property is enclosed in a chain-link fence with slats on the section that has frontage of Wisteria Drive and that the access to the property is only from Waters Road. See Exhibit Nos. 4(b) [accessory structure setback], 7 [zoning vicinity map] and 19(b) [aerial photograph].
6. Mr. Blumberg testified that the subject property is an irregularly shaped lot. Mr. Blumberg testified that the property is much longer than it is deep and that this characteristic makes it difficult for the placement on a large building on the site. Mr. Blumberg testified that the property is fairly flat with regular topography and that the subject property is 30,213 square feet, approximately 7/10ths of an acre.

7. The subject property is uniquely shaped, with a building envelope that narrows from west to east. The shape of the petitioner's lot makes it difficult for the placement of the accessory structure/storage building.

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 while the shape of the subject property is distinctive, the shape of the lot does not preclude the development on the site. The Board finds that the subject property has no exceptional topographical or other conditions peculiar to the lot and that the any "uniqueness" or "peculiarity" caused by the shape of the lot does not constitute "conditions peculiar to the specific parcel of property" of such a severity that the Board may grant the requested variances.

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 of 9.8 feet from the required twelve (12) foot side lot line setback and of 8.2 feet of the required twelve (12) foot rear lot line setback for the existing accessory structure/storage building are denied.

The Board adopted the following Resolution:

On a motion by Catherine G. Titus, Chair, seconded by Carolyn J. Shawaker, with David K. Perdue, Walter S. Booth and Stanley B. Boyd, 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.

Catherine G. Titus
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 12th day of March, 2010.

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.

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 the 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.