

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6360

PETITION OF GLENN AND MARTHA ORLETSKY
(Hearing held February 1, 2012)

OPINION OF THE BOARD
(Effective date of Opinion, March 2, 2012)

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 a variance from Section 59-C-1.323(b)(1). The petitioners propose the construction of a one-story addition/garage that requires a variance of four (4) feet as it is within eight (8) feet of the side lot line. The required side lot line setback is twelve (12) feet.

William Becker, Esquire, represented the petitioners, and Chris Milke, the petitioners' son-in-law, appeared with the petitioners at the public hearing.

The subject property is Lot 19, Block 3, Olney Mill Subdivision, located at 1 Clover Hill Court, Olney, Maryland, 20832, in the R-200 Zone (Tax Account No. 00742497).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 20.6 x 10 foot one-story addition/garage.
2. The petitioners proposed the expansion of an existing one-car carport into a two-car garage. The petitioners are requesting a variance of four feet from the eastern side yard boundary and the requested variance would result in a total encroachment of 15 square feet into the eastern side yard setback. The subject property was built in the early 1970s and the lot is located at the center of a cul-de-sac. The petitioners' lot has a large, mature tree located in the northern front yard and the subject property's asserted uniqueness is that the house is not centered on the lot. In accordance with the development standards for the subdivision, which originally was a farm, a series of trees that were located at the entrance to the farm were to be preserved. The petitioners' house was sited off-center on the lot to preserve the existing trees. See Exhibit Nos. 4 [site plan], 7(a)-(d) [photos], 11 [zoning vicinity map].

Mr. Orletsky testified that the trees are no longer standing, but that they were originally told by the developer that the trees would be saved and in doing so that their house would be offset a little bit to save the trees. The proposed addition would be sited where the existing driveway and carport are currently located. Mr. Orletsky testified that he has spoken with the adjoining neighbors on Lots 18 and 20 and that the neighbors support the variance request. He testified that the proposed addition would be in harmony with architecture in the neighborhood. See Exhibit Nos. 9 [letter of support], and 15 [photo].

Mr. Milke testified that the area where the original trees were removed currently has existing trees in that area. He testified that those trees are substantial in size, but that they are newer than the house. Mr. Orletsky testified that he planted all of the trees in that area.

3. Pursuant to questions from the Board regarding the unique topographical or physical features of the subject property, Mr. Becker stated that the siting of the house is a unique feature of the subject property, and that there is a slight swale between the subject property and an adjoining property that will not be negatively impacted by the proposed construction.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does 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 condition peculiar to the subject property. The Board finds that the preservation of trees or the siting of a house are not circumstances that the Board can take into account in considering an application for the grant of a variance. The Board notes that the uniqueness of a subject property for the purposes of evaluating the petition for a variance does not refer to the extent of the improvements on the property or the location of structures or vegetation on the lot. Accordingly, the location of any existing improvements on the subject property is not a factor that the Board can take into account in evaluating the petition for a variance. See, *Montgomery County, MD v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006).

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 variance of four (4) feet from the required twelve (12) foot side lot line setback for the construction of a one-story addition/garage is denied.

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

David K. Perdue
Vice 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 2nd day of March, 2012.

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.