

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No.A-5807

PETITION OF GARY CARSWELL
(Hearing held October 2, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, October 29, 2002)

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-1.332(a). The petitioner proposes to construct a one-story addition (screened porch) that requires a twelve (12) foot variance as it is within eight (8) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 73, Block B, Gold Mine Cross Subdivision, located at 19211 Honeystone Place, Brookeville, Maryland 20850, in the RE-2/TDR Zone (Tax Account No. 02979708).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 12 x 20.8 foot one-story addition/screened porch.
2. The petitioner testified that the property is a triangular shaped lot that is located on a cul-de-sac and that his property backs up to a 20-foot common area that adjoins a townhouse development. The petitioner testified that the porch could not be built in northern side yard because of an existing chimney or located elsewhere on the lot. The petitioner testified that screened porches are a common structure in the subdivision.
3. The record contains a letter of support from the Oak Grove Homeowners Association and a petition of opposition from neighbors of the Oak Grove Homeowners. See, Exhibit Nos. 5 and 10.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 petitioner's lot has no exceptional topographical or other conditions peculiar to the property that are not shared with the neighboring properties. The Board notes that neighboring Lots 62-65, 74 and 75 are also uniquely shaped and that new construction could be located elsewhere on the petitioner's lot without the need for a variance. See, Exhibit No. 8.

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 twelve (12) feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition/screened porch is denied.

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Angelo M. Caputo and Donna L. Barron, Vice 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.

Donna L. Barron
Vice 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 29th day of October, 2002.

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.