

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. A-5813

PETITION OF STEPHEN D. ROPER

(Hearing held October 9, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, November 7, 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-1.323(b)(1). The petitioner proposes to construct a garage addition that requires a three (3) foot variance as it is with nine (9) feet of the side lot line. The required setback is twelve (12) feet.

The subject property is Lot 2, Block B, Montgomery View Subdivision, located at 809 Olive Drive, Silver Spring, Maryland, 20905, in the RE-1 Zone (Tax Account No. 00254598).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to convert an existing carport into a two-car garage and construct a 16 x 27.7 foot garage addition.
2. The petitioner testified that his lot is long and narrow and that it is the smallest lot in the neighborhood. The petitioner testified that the houses on the neighboring properties are sited differently on the lots, permitting the properties a larger building envelope.
3. The petitioner testified that the proposed addition would not extend beyond the footprint of the existing parking pad and that the addition would be screened by the 40-year-old evergreens that surrounded the property. The petitioner testified that locating the garage elsewhere on the property would require the installation of a significant amount of additional paving and the removal of a large number of mature trees.

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 and that the petitioner's lot is similar in size and shape to the neighboring and adjoining lots. See, Exhibit No. 8 (zoning vicinity map).

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

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 a variance. Accordingly, the requested variance of three (3) feet from the required twelve (12) foot side lot line setback for the construction of a garage addition is denied.

Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, 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 7th day of November, 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.