

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-5979

PETITION OF ZACHARY KREISMAN AND CAREN DORF

(Hearing held May 5, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, July 8, 2004)

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(a). The petitioners propose to construct a one-story addition/garage that requires a 25.45 foot variance as it is within 28.00 feet of the established front building line. The required established building line is 53.45 feet.

Scott Sterl, an architect, appeared with the petitioners at the public hearing. Sue and Robert Glucksman, the adjoining neighbors on Lot 13, appeared in opposition to the variance request.

The subject property is Lot 12, Seven Locks Hills Subdivision, located at 7714 Cindy Lane, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 1002373283).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 21.2 x 22 foot one-story addition.
2. The petitioners testified that the front of their property has a steep slope and that the property's driveway is very slippery during inclement weather. The petitioners testified that the driveway can not be regraded to provide safe access to the residence. The petitioners testified that the variance request will permit a garage in a safe and level area on their property and the existing garage would be converted into additional living space.
3. Mr. Sterl testified that topography along Cindy Lane slopes upward and that the front yards along the street share this characteristic. Mr. Sterl testified that the new construction could not be built in the petitioners' rear yard because of an existing pool and patio and that the topography in the rear yard has a steep upward slope.

4. Mr. Glucksman testified that the streetscape along Cindy Lane is very green and has no obstructions. Mr. Glucksman testified that his property shares that same topography as the petitioners' lot and that an addition would project out into the streetscape. Mr. Glucksman testified that lights from the new construction would shine into his living room and would obstruct the view along the street.

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 conditions peculiar to the property that are not shared with the adjoining and neighboring properties and that the lot is similar in size and shape to other properties in the immediate neighborhood. See, Exhibit No. 7 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that "the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." (*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 factors cited by the petitioners do not create a zoning reason for the grant of a variance.

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 25.45 feet from the required 53.45 foot established front building line for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

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

Donald H. Spence, Jr.
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 8th day of July, 2004.

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.