

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6004

PETITION OF ANNE CAVANAGH
(Hearing held September 1, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, September 16, 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 variances from Section 59-C-1.323(b)(2). The petitioner proposes to construct a one-story addition/garage that requires a variance of ten (10) feet as it is within twenty (20) feet of the rear lot line and a one-story addition that requires a variance of six (6) feet as it is within twenty-four (24) feet of the rear lot line. The required setback is thirty (30) feet.

Paul Locher, agent for the petitioners, appeared with Anne and Richard Cavanagh at the public hearing.

The subject property is Lot 11, Block F, Tusculum Grubby Thicket Subdivision, located at 9509 Burning Tree Road, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 160700437863).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 24 x 26 foot one-story addition and a 24.6 x 28.8 foot one-story addition in the northwest section of the property.
2. Mr. Locher testified that the petitioners have an oddly-shaped lot because the lot fronts on a cul-de-sac. Mr. Locher testified that the siting of the house and its internal design restrict new construction on the property. Mr. Locher testified that an existing carport and shed prevent new construction in the side yard.

FINDINGS OF THE BOARD

Based upon the petitioners' 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 the petitioners' lot has no exceptional topographical or other conditions not shared by the adjoining and confronting properties and that cul-de-sacs are a common characteristic in the petitioners' neighborhood. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995).

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 ten (10) feet from the required thirty (30) foot rear lot line setback for the construction of a one-story addition/garage and of six (6) feet from the required thirty (30) foot rear lot line setback for the construction of a one-story addition are denied.

The Board adopted the following Resolution:

Board member Donna L. Barron was necessarily absent and did not participate in the Resolution. On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Allison Ishihara Fultz, 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 16th day of September, 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.