

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6069

PETITION OF JOHN C. CASSELL
(Hearing held June 1, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, August 2, 2005)

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 petitioner proposes the construction of a two-story addition that requires a variance of six (6) feet as it is within twenty-six (26) feet of the established front building line. The required established building line is thirty-two (32) feet.

The subject property is Lot 18, Block D, Wyngate Subdivision, located at 5807 Wyngate Drive, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No. 572022).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a two-story addition.
2. The petitioner testified that his property is a uniquely-shaped, corner lot, located at the intersection of Wyngate and Lindale Drives. The petitioner testified that the house is sited at an angle, deep within the lot, and that his house is the only house on the street that is not sited parallel to the road. The petitioner testified that the siting of the house results in a large front yard and no rear yard.
3. The petitioner testified the new construction can not be located in the property's rear yard because of an existing driveway and garage. The petitioner testified that new construction could be located elsewhere on the lot, but that it would not maintain the exterior design of the house. The petitioner's lot is 9,294 square feet.

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 while the shape of the petitioner's lot is distinctive, the lot has no exceptional topographical or other conditions peculiar to the property and that new construction could be built on the property without the need for a variance. See, Exhibit Nos. 4 [site plan] and 9 [zoning vicinity map].

The Board further finds that the petitioner's lot significantly exceeds the minimum lot size for the R-60 Zone and that neither the siting of a house nor its external design are circumstances that the Board can take into account in considering an application for the grant of a variance. *Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996).

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 six (6) feet from the required thirty-two (32) foot established front building line for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, and with Wendell M. Holloway, abstaining, 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.



Allison Ishihara Fultz
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 August, 2005.

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.