

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5764

PETITION OF DAVID DAHAN

(Hearing held June 5, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, July 5, 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 reduces the sum of both side yards to 20.20 feet. The required sum of both side yards is twenty-five (25) feet.

Serita and David Dahan, the petitioners, provided testimony at the public hearing.

The subject property is Lot 4, Block 1, Regent Park Subdivision, located at 11902 Seven Locks Road, Potomac, Maryland, in the R-90 Zone (Tax Account No. 00092783).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 20 x 12 foot garage addition in the southern side yard. The petitioner testified that the addition would be built on the existing concrete slab.
2. Ms. Dahan testified that she suffers from night blindness and that the proposed structure would provide her with a safe exit and entrance to the residence. Mr. Dahan testified that the area is currently used for the family parking and that a covered and enclosed structure would provide a more secure access to the home.
3. A letter from Fariba Eshraghi, OD, the petitioner's physician, was entered into the record as Exhibit No. 4. The letter from Dr. Eshraghi does not address the petitioner's need for the garage addition as a result of her existing medical condition.

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 that do not exist on the adjoining and neighboring lots and that the petitioner's lot is consistent in shape and size with other lots in the neighborhood.

The Board notes that the petitioner's medical condition does not necessitate the need for the proposed garage and does not meet the standards for which reasonable accommodation would be required under the Americans with Disabilities Act (ADA) and the Fair Housing Amendments Act of 1988 (FHAA).

The petition does not meet the requirements of Section 59-G-1.3(a) of the Montgomery County Zoning Ordinance for the grant of a variance. Nor does it require governmental action under the ADA or FHAA. The Board did not consider the balance of the requirements in Section 59-G-1.3 of the Zoning Ordinance for the grant of a variance. Accordingly, the requested variance of 4.80 feet from the required twenty-five (25) foot sum of both side yards is denied.

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.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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 5th day of July, 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.