

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5923

PETITION OF PEGGY-RAE AND JOHN T. SAPIENZA, JR.
(Hearing held September 24, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, October 30, 2003)

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 that requires a ten (10) foot variance as it is within thirty (30) feet of the front lot line. The required setback is forty (40) feet.

Jeffrey Way, an architect, represented the petitioners at the public hearing.

The subject property is Lot 32, Block E, North Spring Brook Subdivision, located at 12606 Eldrid Court, Silver Spring, Maryland, 20904, in the R-200 Zone (Tax Account No. 00344110).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 21 x 25 foot carport addition.
2. The petitioners testified that a prior owner converted the property's existing garage into living space and that the property no longer has covered parking. The petitioners testified that the house is centered on the lot and that there is very little area in the side yards for an addition.
3. The petitioners testified that the property's rear yard slopes downward and that is characteristic is shared with the neighboring properties. The petitioners testified that the proposed structure would be located at the front of the residence at the end of the existing driveway.
4. Mr. Way testified that the structure would have a gable roof that would minimize the view of the addition from the front of the house. Mr. Way

testified that neighboring homes extend beyond the proposed location for the addition and that it would not impact the neighboring properties.

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 that are not shared with the neighboring and adjoining properties. The Board further finds that the petitioner's lot is consistent in shape and size with the other lots in the 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.

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 ten (10) feet from the required forty (40) foot front lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

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

Allison Ishihara Fultz
Acting 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 30th day of October, 2003.

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.