

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

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

Case No. A-5972

PETITION OF CHESTER L. COATES

(Hearing held May 5, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, May 28, 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)(1). The petitioner proposes to construct one-story addition (carport) that requires a variance of five (5) feet as it is within three (3) feet of the side lot line and a variance of twelve (12) feet as it reduces the sum of both side yards to thirteen (13) feet. The required side lot line setback is seven (7) feet and the required sum of both side yards is twenty-five (25) feet.

Helen and Norbert Muckelbauer, the adjoining neighbors on Lot 3, appeared in opposition to the variance request. Mr. and Mrs. Muckelbauer were represented by Robert Windsor, Esquire, at the public hearing.

The subject property is Lot 4, Block 3, Spring Brook Knolls Subdivision, located at 1006 Nora Drive, Silver Spring, Maryland, 20903, in the R-90 Zone (Tax Account No. 00347886).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner's lot is 12,263 square feet. The petitioner proposes to construct a 14 x 22 foot carport addition.
2. The petitioner testified that his property has no exceptional topographical or other conditions peculiar to the property and that the variance request was filed based upon the American With Disabilities Act (ADA) and the Fair Housing Amendment Act of 1988 (FHAA).
3. The petitioner testified that the variance request is based upon the quality of life for his mother, who has been living with the petitioner since May 2003. The petitioner testified that his mother requires the use of a cane, occasionally a walker, and at times a wheelchair. A letter confirming his mother's condition was entered into the record. See, Exhibit No. 3(c) [doctor's letter]. The petitioner testified that his mother has limited mobility

and that the construction of a carport would minimize his mother's traveling distance in and out of the residence.

4. The petitioner testified that the existing driveway could be extended and that an awning could be constructed over the side entrance of the house without the need for a variance, but that the construction of a carport would provide cover for a vehicle, eliminating the possibility of his mother being exposed to the elements. The petitioner testified that it was feasible to construct a carport or garage in his rear yard, but that construction in this area would increase the lighting, the noise, the fumes and the encroachment in the green-space on the property.
5. In response to questions from Mr. Windsor, the petitioner stated that a garage could be built in the rear yard without the need for a variance, but that a structure in the rear yard would not be in harmony with the architectural design of the house or with the adjoining and neighboring properties. Mr. Windsor stated that the carport, as proposed, would substantially reduce the distance between the petitioner's house and the Muckelbauer's house. Mr. Windsor stated that if a car door were to be opened while in the carport, it would extend onto the Muckelbauer's property.
6. Mr. Muckelbauer testified that he sent a letter of opposition to the variance request. See, Exhibit No. 14(b). Mr. Muckelbauer testified that the variance request would affect the value of his property and that a carport is not a typical structure in the neighborhood.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds as follows:

The requested variance does not comply with the applicable standards and requirements of the Montgomery County Zoning Ordinance set forth in Section 59-G-3.1. The variance request was considered under the ADA and the FHAA provisions.

The Board finds that the variance request does not meet the provisions under the ADA and the FHAA requirements for reasonable accommodation because the conditions of the petitioner's mother could be accommodated without the need for a variance, and new construction could be built on the property without the necessity of a variance.

Accordingly, the requested variances of five (5) feet from the required eight (8) foot side lot line setback and of twelve (12) feet from the twenty-five (25) foot sum of both side yards requirement for the construction of a one-story addition/carport are denied.

The Board adopted the following Resolution:

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

Allison Ishihara Fultz
Presiding 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 28th day of May, 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.