

**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-5973

PETITION OF THOMAS J. BAGNALL

(Hearing held April 21, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, June 11, 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 a variance from Section 59-C-1.323(a). The petitioner proposes to construct a one-story addition that requires a 4.95 foot variance as it is within thirty-one (31) feet of the established front building line. The required setback is 35.95 feet.

Margaret and Thomas Bagnall attended the public hearing.

The subject property is Lot 41, Block 1, Rock Creek Manor Subdivision, located at 13816 Drake Drive, Rockville, Maryland, 20853, in the R-90 Zone (Tax Account No. 01423337).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 4.9 x 20 foot one-story addition. The petitioners' lot is 10,501 square feet.
2. The petitioners testified that their lot is unique because of the sloping topography in the right side yard and also because of an existing storm drain on the property. The petitioners testified that the storm drain causes occasional flooding of the lot. The petitioners testified that the addition would be built in an area that does not flood and that it would replace an existing porch. See, Exhibit No. 5(a) [front elevations].
3. The petitioners testified that new construction addition could be added to the property without the need for a variance, but that it would require the movement of the gas and water lines and that it would be out of character with the architectural design of the house. The petitioners testified that the addition would be in harmony with other improvements in the neighborhood and that their property adjoins a public park.

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 peculiar to the property that are not shared with the neighboring and adjoining properties. The Board further finds that the petitioners' lot is similar in shape and size to the neighboring properties in the immediate area and that their lot exceeds the minimum lot size for the R-90 Zone. See, Exhibit No. 7 [zoning vicinity map].

The Board notes that the new construction could be built elsewhere on the property without the necessity of a variance.

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 4.95 feet from the required 35.95 foot established front building line for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo 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 11th day of June, 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.