

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

**Case No. A-5991**

**PETITION OF ROBERT D. IVEY, JR.**  
(Hearing held June 23, 2004)

**OPINION OF THE BOARD**  
(Effective date of Opinion, July 20, 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 Sections 59-C-1.323(a) and 59-C-1.323(b)(1). The petitioner proposes to construct a one-story garage addition that requires a variance of five (5) feet as it is within twenty-five (25) feet of the established front building line and a variance of five (5) feet as it is within two (2) feet of the side lot line. The established front building line is thirty (30) feet and the required side lot line setback is seven (7) feet.

Ivan Madariaga, the adjoining neighbor on Lot 24, appeared in opposition to the variance request.

The subject property is Lot 23, Block K, Viers Mill Village Subdivision, located at 4510 Sigsbee Road, Silver Spring, Maryland, 20906, in the R-60 Zone (Tax Account No. 01168375).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct a 14 x 29 foot one-story garage addition.
2. The petitioner testified that his rear yard has a steep, downward slope and that this characteristic is shared with the other lots in the neighborhood. The petitioner testified that new construction elsewhere on the property would be more costly and that the proposed addition would provide an easy and safe access to the residence for his wife.
3. The petitioner testified that the eastern side yard is the only level area on the property and that the structure would be accessible from both the front and rear.
4. Mr. Madariaga testified that the topography of all of the lots in the neighborhood is the same and that the addition could be built without the

need for a variance. Mr. Madariaga testified that the proposed structure would be too close to the boundary between the two lots and that if there were a fire in the structure, his property would be unsafe.

**FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do 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 are peculiar to his property and that are not shared with the adjoining and neighboring properties. Additionally, the Board finds that the terrain of the neighborhood is substantially the same on all of lots.

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 variances of five (5) feet from the required thirty (30) foot established front building line and of five (5) feet from the required seven (7) foot side lot line setback for the construction of a one-story garage addition are denied.

The Board adopted the following Resolution:

Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with, 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.

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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 20th day of July, 2004.

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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.