

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6013

PETITION OF FITWI TEKESTE
(Hearing held September 22, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, October 22, 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-1.326(2)(B). The existing accessory structure/8-foot fence requires a variance of seventy-two (72) feet as it is within 0.25 feet of the rear lot line. The required setback is 72.25 feet.

The subject property is Lot 6, Block 62, Takoma Park Subdivision, located at 112 Ritchie Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01080850).

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

EVIDENCE PRESENTED TO THE BOARD

1. The existing 8-foot fence is located at the southern boundary of the petitioner's property.
2. The petitioner testified that a 4-foot fence was replaced with the 8-foot fence because the prior fence was not effective in keeping trespassers off of the property. The petitioner testified that the City of Takoma Park recently added new playground equipment and a basketball court to the park area that adjoins the rear of his property. The petitioner testified that since the installation of the new equipment, he has experienced a lot of trespassers on his property.
3. The petitioner testified that the trespassers come onto his property to retrieve balls or to cut through the property as a shortcut to Ritchie Avenue. The petitioner testified that the neighboring properties are not as impacted by the recent improvements because less of their lot adjoins the park. The petitioner's lot is 20,387 square feet. The petitioner testified that a fence of 6½ feet would not be successful in keeping trespassers off of his lot.

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 peculiar to the property and that the petitioner's lot size significantly exceeds the minimum lot size for the zone. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that for the 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 seventy-two (72) feet from the required 72.25 foot rear lot line setback for the construction of an accessory structure/8-foot fence is denied.

The Board adopted the following Resolution:

Board Chairman Donald H. Spence, Jr., 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, 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
Residing 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 22nd day of October, 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.