

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6021

PETITION OF ADA AND LIVIO DIMICHELE

(Hearing held September 22, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, November 5, 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(b)(2). The petitioners propose the construction of a one-story addition/sunroom that requires a variance of three (3) feet as it is within seventeen (17) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 1, Block A, Havenwood Subdivision, located at 2015 Glenhaven Place, Silver Spring, Maryland, 20902, in the R-60 Zone (Tax Account No. 00969766).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the enclosure of an existing 11 x 13 foot brick deck.
2. The petitioners testified that they received a variance in 1988 for the side yard to permit an addition to their kitchen and that the brick deck was constructed at that time. The petitioners testified that the existing deck is not often used and that its enclosure would permit utilization of the space as a sunroom.
3. The petitioners testified that their property is a corner lot and that the house is sited at angle on the lot, resulting in a pie-shaped rear yard. The lot is 7,443 square feet. The petitioners testified that the footprint of the deck would not change and that the addition would be constructed of glass walls with a roof.

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 is a corner lot that has no exceptional topographical or other conditions peculiar to the property and that its shape and size is similar to the other corner lots in the immediate neighborhood. Other lots in the immediate area of the petitioners' lot have a more distinctive shape than does the petitioners' property. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that the petitioners' lot is significantly larger than most of the neighboring lots and 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 or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 310 (1995)). The Board further notes that the petitioners received a prior variance and that the grant of an additional variance would tax the lot's existing conditions. See, Exhibit No. 12 [Opinion of the Board].

The petition does not meet the requirements of Section 59-G-1.3(a). The Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of three (3) feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition/sunroom 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
Chair, 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 5th day of November, 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.