

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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

**Case No. A-6024**

**PETITION OF DIANNE SCHWAGER AND DANIEL DAVIDSON**

(Hearing held October 20, 2004)

**CORRECTED OPINION OF THE BOARD**

(Effective date of Opinion, December 6, 2004)

**(Effective date of Corrected Opinion, January 21, 2005)**

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 petitioners propose the construction a bay window that requires a variance of 1.10 feet as it is within 5.90 feet of the side lot line and a one-story addition that requires a variance of 1.30 feet as it is within 5.70 feet of the side lot line. The required side lot line setback is seven (7) feet.

Paul Treseder, an architect, appeared with the petitioners at the public hearing.

The subject property is Lot 7, Block 8, Sumner Subdivision, located at 5609 Ontario Circle, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00607177).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of a 1.5 x 10.75 foot bay window at the northern section of the dwelling and a 13.0 x 24.01 foot one-story addition at the southern section of the dwelling.
2. The petitioners testified that they propose the removal of the existing screened-in porch, and will replace it with a one-story addition and that they plan the installation of the bay window.
3. The petitioners testified that their lot is smaller than most of the lots in the neighborhood and that the topography at the front of the property slopes upward and that the rear yard slopes downward. The petitioners testified that the size of their lot and its topography are the conditions that make the lot unique. The lot is 6,390 square feet. The petitioners testified that the topography varies on the individual lots in the neighborhood, but that the topography is the most extreme on their lot.

4. The petitioners testified that new construction could be built in the rear yard, but that the rear yard would require additional grading, which would negatively impact the water-flow from their lot onto their neighbors' lots. The petitioners testified that new construction in the rear yard would also adversely impact an existing, mature oak tree.
5. The petitioners testified that the proposed construction would be similar to other improvements in the neighborhood and that their neighbors support the variance request. The petitioners testified that other homes in the neighborhood have received variances to construct similar improvements to their property.

### **FINDINGS OF THE BOARD**

Based upon the petitioners' 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 petitioners' lot has no exceptional topographical or other conditions peculiar to the property that result in practical difficulties in complying with the regulations. The Board finds that while the size and width of the lot may be smaller than others in the neighborhood, this does not cause a practical difficulty in complying with the setback restrictions because, as the petitioners conceded, the addition could be built in the rear yard without the need for a variance. They claim that the topography of the rear yard prevents them from building an addition in that location. However, the petitioners failed to prove that the topography of the rear yard is unique or different from other lots in the area. In fact, the topographical map presented by the petitioners indicates that there are many lots in the vicinity that slope more steeply than the petitioners' property (See Exhibit No.12).**

The Board notes that the grant of prior variances is not a standard used for the grant or denial of a variance and that for purposes of evaluation for the grant of a variance that "the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994)). Each variance request is decided on its own merits.

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 1.10 feet from the required seven (7) foot side lot line setback for the construction of a bay window and of 1.30 feet from the required seven (7) foot side lot line setback for the construction of a one-story addition are denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, 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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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 21st day of January, 2005.

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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.