

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6033

PETITION OF DR. ROBERT TEUNIS
(Hearing held December 1, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, January 27, 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 a variance from Section 59-C-1.323(b)(2). The petitioner proposes the construction of a one-story addition that requires a five (5) foot variance as it is within twenty-five (25) feet of the rear lot line. The required setback is thirty (30) feet.

Shahin Batmanglish, AIA, represented the petitioner at the public hearing.

The subject property is Lot 11, Block 7, Candlewood Park Subdivision, located at 7108 Panorama Drive, Derwood, Maryland, 20855, in the R-200 Zone (Tax Account No. 00124754).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 17.8 x 25.10 foot one-story addition.
2. Mr. Batmanglish testified that the property is unique because of its angled lot lines and that the petitioner's lot is shaped differently than the neighboring lots. Mr. Batmanglish testified that the topography of the lot slopes from left to right and that only a pie-shaped section of the new construction requires the variance.
3. Mr. Batmanglish testified that the addition could not be moved because an addition located elsewhere on the property would not be functional to the existing house.

FINDINGS OF THE BOARD

Based upon the 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 while the shape of the petitioner's lot is distinctive, the petitioner's lot has no exceptional topographical or other conditions peculiar to the property and that are not shared with the neighboring and adjoining properties. The Board further finds that the angled property lines increase, and not reduce the area of the petitioner's rear yard. See, Exhibit No. 4 [site plan].

Additionally, the Board notes 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)). The factors cited by the petitioner's agent do not create a zoning reason for the grant 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 five (5) feet from the required thirty (30) foot rear lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Donna L. Barron, 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.

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 27th day of January, 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.