

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

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

Case No. A-6035

PETITION OF CHARLES AND ELEANOR RICE
(Hearing held December 8, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, January 28, 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 petitioners propose the construction of a two-story addition that requires an eight (8) foot variance as it is within twelve (12) feet of the rear lot line. The required setback is twenty (20) feet.

Michael A. Finn, an architect, and David W. Bradley, of Bradley Construction Company, appeared with the petitioners at the public hearing.

The subject property is Lot 14, Block 10, Westboro Subdivision, located at 4500 Cheltenham Drive, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00539665).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a two-story addition in the northwest section of the property.
2. Mr. Finn testified that the property is an exaggerated, corner lot with two front yard setbacks that are not at a 90 degree angle, but on an oblique angle. The property is located at the intersection of Sleaford Road and Cheltenham Drive.
3. Mr. Finn testified that the property is an irregularly-shaped lot in a neighborhood of rectangular lots and that the property adjoins a local high school's playing fields at Sleaford Road. Mr. Finn testified that the property is larger than the neighboring properties, but that the required setbacks restrict the buildable area of the lot. The lot is 9,237 square feet.

4. Mr. Finn testified that the design of the new construction would locate the garage addition next to the front door of the house and that the proposed addition would permit the petitioners to take their cars off the street because walking in this area is difficult. Mr. Finn testified that if the addition were for a single car a variance may not be required.
5. Mr. Bradley testified that because of the design of the house, other areas on the lot could not accommodate the proposed addition. The petitioner testified that she has spoken with their neighbors and that the neighbors had not concerns about the variance request.

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 has no exceptional topographical or other conditions peculiar to the property and that although the petitioners' lot has a distinctive shape, the lot is 50 percent larger than the required minimum lot size for the zone. See Exhibit No. 7 [zoning vicinity map].

The Board notes that new construction could be built on the property without the need for a variance 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 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 eight (8) feet from the required twenty (20) foot rear lot line setback for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, Chair, with Louise M. Mayer and Wendell M. Holloway, in agreement, and with Angelo M. Caputo, in opposition, 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 28th day of January, 2005.

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.