

**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-6046

PETITION OF PATRICK FERRY

(Hearings held March 2 and March 16, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, April 15, 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 Sections 59-C-1.326, 59-C-1.326(a)(2)(A) and 59-C-1.326(a)(2)(C). The petitioner proposed the construction of an accessory structure in the front yard that requires a variance of sixty-three (63) feet as it is within two (2) feet of the front lot line and a variance of eleven (11) feet as it is within one (1) foot of the side lot line. The required front lot line setback is sixty-five (65) feet and the required side lot line setback is twelve (12) feet.

Paul Majewski appeared in opposition to the variance request.

The subject property is Lots 4, 5 and 6, Brickley Subdivision, located at 13105 Suncrest Avenue, Clarksburg, Maryland, 20871, in the R-200 Zone (Tax Account No. 00016131).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 16 x 20 foot accessory structure/carport.
2. The petitioner testified that his property consists of Lots 4, 5 and 6 and that the carport would be located on Lot 6. The petitioner testified that the topography on his lots drops 60 feet from Lot 4 to Lot 6 and that septic fields are located on Lots 4 and 5. The petitioner testified that the only level area on the subject property is located on Lot 6.
3. The petitioner testified that the carport could not be located elsewhere on Lot 6 because the structure would block the windows of the house,

require the removal of the existing trees or require the removal of the existing fence. The petitioner testified that adding an addition to the residence would not be in harmony with the design of the house.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 petitioner's lot has no exceptional topographical or other conditions peculiar to the property that are not shared with the neighboring properties. The Board finds that the petitioner's lot is similar in shape and size to the neighboring and adjoining properties. See, Exhibit No. 8. [zoning vicinity map].

The Board notes that new construction could be added to the property without the need of a variance and that the topographical conditions on the petitioner's lot are consistent on the other properties in the neighborhood. See, Exhibit No. 10(b) [topo map].

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 sixty-three (63) feet from the required sixty-five (65) foot front lot line setback and of eleven (11) feet from the required twelve (12) foot side lot line setback to permit the construction of an accessory structure/carport in the front yard are denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, 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 15th day of April, 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.