

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6052

PETITION OF BARRY WERTHEIMER

(Hearing held March 3, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, March 31, 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 petitioner proposes the construction of a two-story addition that requires a variance of four (4) feet as it is within four (4) feet of the side lot line and a variance of eight (8) feet as it reduces the sum of both side yards to seventeen (17) feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is twenty-five (25) feet.

Joan Lawrence and Meir Kende appeared in opposition to the variance request.

The subject property is Lot 15, Block H, Willerburn Acres Subdivision, located at 12007 Reynolds Avenue, Potomac, Maryland, 20854, in the R-90 Zone (Tax Account No. 00115420).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 13.1 x 26.4 foot two-story addition.
2. The petitioner testified that he proposes the demolition of the existing single-story, single-car garage and to replace it with a two-car, two-story addition. The petitioner testified that his lot is one of the narrower lots in the neighborhood and that most homes in the neighborhood have two-car garages.
3. The petitioner testified that a garage could not be located in the rear yard because the topography in this area slopes downward and that

the depth of his lot is too shallow to permit a turnaround area for the garage at the rear of the property. The petitioner testified that new construction could not be built elsewhere on the property because it would require the removal of the existing mature trees.

4. Ms. Lawrence testified that she was appearing for Ms. Novotny, an adjoining neighbor of the petitioner who could not appear. Ms. Lawrence testified that the proposed addition would eliminate the area at the rear of the two lots and would loom over the existing living space on the Novotny property. Ms. Lawrence testified that the properties that have garages are those lots that can support those structures.
5. Mr. Kende testified that his lot is the same size as the petitioner's lot and that in his opinion a garage could be added to the property without the need for a variance.

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 and that the petitioner's lot is similar in size and shape to the surrounding properties. Additionally, the Board finds that new construction could be built on the property without the need for a variance. See Exhibit No. 7 [zoning vicinity map].

The Board notes that the petitioner's lot exceeds the minimum width for lots in the zone and that the lot significantly exceeds the minimum lot size for the R-90 Zone.

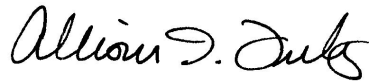
The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of four (4) feet from the required eight (8) foot side

lot line setback and of eight (8) feet from the required twenty-five (25) foot sum of both side yards requirement for the construction of a two-story addition 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 31st day of March, 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.