

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6145

PETITION OF GLENN FITZPATRICK
(Hearing held July 12, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, October 12, 2006)

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(a). The petitioner proposes the construction of two-story addition that requires a 22.70 foot variance as it is within 17.30 feet of the front lot line setback. The required setback is forty (40) feet.

The subject property is Lot 5A, Block A, Poole's Subdivision, located at 15500 Kruhm Road, Burtonsville, Maryland, 20866, in the R-200 Zone (Tax Account No. 00262304).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 27 x 24 foot two-story addition.
2. The petitioner testified that his property is a corner lot that is unique in comparison to the neighboring properties. The petitioner testified that his property is an oddly shaped lot that narrows from east to west. The petitioner testified that the lot is 200 feet in depth at the eastern end of the lot, narrowing to 86 feet in depth at the western end of the lot. The petitioner testified that his lot is 20,000 square feet, which is substantially smaller than the neighboring properties that are wider and deeper. See Exhibit Nos. 4 [site plan] and 10 [zoning vicinity map].
3. The petitioner testified that the proposed garage is sited in the eastern section of the lot because the property's existing septic system that is located in the western section of his lot. The petitioner testified that the

proposed structure can not be located elsewhere on the property. The petitioner testified that Spencerville Road is a very busy highway and that the proposed addition would act as a barrier to mitigate the traffic noise.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 petitioner's property is irregularly shape, any "uniqueness" or "peculiarity" caused by the irregular shape of the lot does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance. The Board finds that the property's septic system is not a factor that the Board can take into account in evaluating the petition for a variance. (*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 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 22.70 feet from the required forty (40) foot front lot line setback for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

On a motion by Caryn L. Hines, 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 12th day of October, 2006.

Katherine Freeman
Executive Director

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.