

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6184

PETITION OF BARRY AND IRENE WERTHEIMER

(Hearing held March 28, 2007)

OPINION OF THE BOARD

(Effective date of Opinion, June 21, 2007)

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 petitioners propose the construction of a carport that requires a variance of 6.67 feet as it is within 1.33 feet of the side lot line and a variance of 9.97 feet as it reduces the sum of both side yards to 15.03 feet. The required side lot line setback is fifteen (15) feet and the required sum of both side yards in twenty-five (25) feet.

Elaine Cochran and Joan Lawrence appeared at the public hearing in opposition to the variance request.

The subject property is Lot 15, Block H, 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 petitioners propose the construction of carport.
2. The petitioner testified that his lot is significantly narrower in comparison to the other lots in the neighborhood and that this characteristic limits his buildable area. The petitioner testified that there are 27 properties along Reynolds Avenue and that the width of those lots ranges from 66 feet to 171 feet in width. The petitioner testified that only one property in the neighborhood has a single car garage and that the majority of the properties have two car garages. The petitioner testified that his lot is 85 feet in width and 11,062 square feet in size. See Exhibit No. 6 [Reynolds Avenue property width].

3. In response to questions from the Board, the petitioner testified that an addition was built to the rear of the house and that the carport was built at that time. The petitioner testified that the addition was built with a permit, but the carport was not. The petitioner testified that he has investigated the possibility of a detached garage in the rear yard, but that there would be practical difficulties in maneuvering in and out of such a structure. The petitioner testified that the requested carport would provide for covered parking for a second vehicle and that the property does have an existing one car garage. The petitioner testified that he had applied for a variance in 2005 and that it was denied by the Board of Appeals. See Exhibit Nos. 17(a) and 17(b) [photographs].
4. Ms. Lawrence testified that the petitioners' lot has no characteristics that make the lot unique. Ms. Lawrence testified that the lots on the north side of street are smaller and have one car garages; and that lots on the south side of the street are larger and therefore have two car garages. Ms. Lawrence testified that Exhibit 14 shows that there is almost no space between the petitioner's property and the adjoining Lot 14. See Exhibit No. 14 [aerial photograph].
5. Ms. Cochran testified that her main concern is the drainage from the petitioners' lot and that Exhibit 16 shows that the distance between the two properties. See Exhibit No. 16 [photographs].

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 petitioners' lot meets the minimum lot width for the zone and that the lot significantly exceeds the minimum lot size for the zone. The Board finds that the petitioner's lot has no exceptional topographical or other extraordinary conditions that are peculiar to the subject property. The Board finds that for purposes of evaluating a petition for a variance that uniqueness or peculiarity of a property 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. 324, 653 A.2d 532 (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 variances of 6.67 feet from the required eight (8) foot side lot line setback and of 9.97 feet from the required twenty-five (25) foot sum of both side yards requirement for the construction of a carport are denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Catherine L. Titus, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

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 21st day of June, 2007.

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.