

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6212

PETITION OF FRANK FOTIA AND PATRICIA HILTON

(Hearing held May 30, 2007, Worksession held July 11, 2007)

OPINION OF THE BOARD

(Effective date of Opinion, July 14, 2008)

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-1.535. The existing one-story addition requires a variance of 6.20 feet as it is within 3.80 feet of the side lot line. The required side lot line setback is ten (10) feet.

The subject property is Lot 249, Dufief Subdivision, located at 14729 Pebble Hill Lane, Gaithersburg, Maryland, 20878, in the R-200C Zone (Tax Account No. 01482291).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners testified that the subject property is on a cul-de-sac and that their lot is sited lower than the rest of the homes on the cul-de-sac. The petitioners testified that their property is a pie-shaped lot and that the lot's topography drops 8-10 feet. The petitioners testified that the topography in the northern and eastern sections of their lot falls very sharply and that these areas are steeply sloped. The subject property is 14,743 square feet. See Exhibit Nos. 4 [survey] and 7 [zoning vicinity map].
2. The petitioners testified that the addition to the garage was built without a building permit. The petitioners testified that their house is sited closest to the western boundary of the lot and that the eastern section of the lot is a drain for the neighborhood. The petitioners testified that the eastern section of their lot has a large drain that pushes the water to the back of the lot and that this area is always damp. The petitioners testified that their driveway serves as drainage for the whole area.

3. The petitioners testified that the addition is located at its current site because the architectural review committee of their homeowners association would not approve another location for the garage and that locating the addition elsewhere would create drainage problems. The petitioners testified that two-car garages are typical for the neighborhood and that most of the homes in the neighborhood have double-car garages.

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 while the pie-shape of the subject property is distinctive, the lot is of sufficient size to accommodate the proposed development elsewhere without the need for a variance. Therefore, the shape of the lot does not constitute a "condition peculiar to a specific parcel of property" that causes the strict application of the Zoning Ordinance to have a disproportionate impact on the subject property. The Board finds that the petitioners' lot has no exceptional topographical or other extraordinary conditions that are peculiar to the subject property that are not shared with the adjoining and neighboring properties.


The Board finds that for purposes of evaluation of a petition for a variance that the uniqueness or peculiarity does not refer to the extent of the improvements on the property; and the location of the house on the lot is not a factor that the Board can take into account in evaluating the petition for a variance. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1995). Additionally, any homeowners' association requirements are private obligations to which the petitioners are subject independent of the Zoning Ordinance, but which do not control or affect the application of the Zoning Ordinance requirements to the subject property.

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 six and two tenths (6.2) feet from the required ten (10) foot side lot line setback for the construction of a garage addition is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Caryn L. Hines, Catherine G. Titus 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 14th day of July, 2008.

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.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County