

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6240

PETITION OF DAVID WACHTEL

(Hearing held February 13, 2008; Worksession held April 2, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, May 1, 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-1.323(b)(1). The petitioner proposes the construction of a screened porch that requires a variance of three and three tenths (3.3) feet as it is within three and seven tenths (3.7) feet of the side lot line setback. The required side yard setback is seven (7) feet.

The subject property is Lot P26, Martins 2nd Addition Subdivision, located at 3505 Shepherd Street, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 03015350).

The hearing in Case No. A-6240 was held and concluded on February 13, 2008, but the record was held opened for additional information from the petitioner regarding the subdivision and the recordation of the deed for the subject property and a to-scale drawing for his lot. After the Board received the requested information, it decided this case at its Worksession held on April 2, 2008.

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the conversion of an existing deck into a screened porch at the northeast corner of the house.
2. The petitioner testified that his lot was originally subdivided in 1904 and that his lot is uniquely shaped. The petitioner testified that most of the lots on his street are 7,000 square feet, but that his lot is 6,580 square feet. The petitioner testified that 420 square feet was sheared off of his lot and added to Lot 25 when the lots were sold to a builder in 1993. The petitioner testified that the 1993 deed shows that 26 lots were sold to a builder with the

exception of a 7-foot wide and a 60-foot long strip of land in the northeast section of his lot. See Exhibit Nos. 4 [site plan] and 8 [zoning vicinity map].

3. The petitioner provided information in the record regarding the sale of the strip of land on his lot in a letter dated March 24, 2008, the letter states “. . . . I reached Montgomery County Parks & Planning (MCP) to ask whether MCP considers the term “subdivision” to apply to the sale of our lot in 1993, because of the change in the side lot line. The MCP staff member I spoke to indicated that the described change is a subdivision. That advice sounds consistent with Montgomery County Code Section 50-1, which defines subdivision to include “resubdivision” and defines minor subdivision to include subdivisions involving less than 5% of the property (about 6% of Lot 26 was retained by the owner of Lot 25).

If the eight (8) foot setback applies, so the variance we are seeking is one foot larger than originally proposed and one foot larger than reflected in the drawings.”

4. The petitioner testified that his house was built between 1994-1995 and that the deck was a part of the original construction of the house. The petitioner testified that his lot is 6,580 square feet and about 15% smaller than adjoining Lot 25 and 5% to 10% smaller than neighboring lots in the immediate neighborhood.
5. The petitioner testified that new construction could be built in the rear yard, but that the possibility has not been investigated. The petitioner testified that new construction in the rear yard would make the house seem larger and that what is proposed would sort of tuck the screened porch into a spot that's between the edges of the house and make it seem smaller and it would not obstruct the view of his neighbors.

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 the shape of the petitioner's property is not distinctive because it is primarily rectangular and that the slight irregularity that is caused by the removal of a 7 foot x 60 foot strip of land at the northeast section 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 notes that the subject property

is larger than the minimum lot size for the R-60 Zone and that it is not constrained in width or depth.

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 three and three tenths (3.3) feet from the required seven (7) foot side lot line setback for the construction of a screened porch is denied.

The Board adopted the following Resolution:

On a motion by Karen L. Hines, seconded by David K. Perdue, with Wendell M. Holloway, 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 1st day of May, 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.