

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6252

PETITION OF BING LU AND YINGZI YANG

(Hearing held May 14, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, June 20, 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 variances from Sections 59-C-1.323(a) and 59-C-1.323(b)(1). The petitioners propose the construction of a second-story addition that requires variances of five and fifty-eight hundredths (5.58) feet as it is within twenty-four and forty-two hundredths (24.42) feet of the front lot line and of point seventy-five hundredths (.75) feet as it reduces the sum of both side yards to twenty-four and five tenths (24.5) feet. The required front lot line setback is thirty (30) feet and the required sum of both side yards is twenty-five (25) feet.

The subject property is Lot 7, Block A, West Bethesda Park Subdivision, located at 8102 Woodhaven Boulevard, Bethesda, Maryland, 20817, in the R-90 Zone (Tax Account No. 00419215).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a second-story addition.
2. The petitioners testified that the previous owners received a variance to permit the construction of the existing garage and kitchen. The petitioners testified that the second-story addition would be built on the footprint the existing kitchen and garage and that the new construction will not expand the footprint of the existing house. See Exhibit No. 11 [BOA opinion dated 6/4/1987].
3. The petitioners testified that their lot is 1,200 square feet. The petitioners testified that new construction elsewhere on the property would be awkward in its design as the front of the existing garage is sited slightly forward of the

front of the house. The petitioners testified that their house is sited higher than the land that surrounds it and that the house is sited on a plateau. See Exhibit Nos. 7 [photo] and 9 [zoning vicinity map].

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 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 topography of the subject property is an exceptional circumstance and that the strict application of zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

On a motion by Wendell M. Holloway, the motion did not receive a second.

FINDINGS OF THE BOARD

Based upon the petitioners' 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 topography of the petitioners' lot does not restrict development on the lot and that any "uniqueness" or "peculiarity" caused by the lot's topography does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variances. The Board notes that the subject property significantly exceeds the minimum lot size for the zone and that the size of the lot is such that a generous buildable area for development remains.

Board Chair Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution. On a motion by David K. Perdue, seconded by Vice Chair Catherine G. Titus, with Wendell M. Holloway in opposition, the motion failed for a lack of a majority.

The petition for the requested variances of five and fifty-eight hundredths (5.58) feet from the required thirty (30) foot front lot line setback and of point seventy-five hundredths (.75) feet of the required twenty-five (25) foot sum of both side yards requirement for the construction of a second-story addition failed for lack of a majority.

Catherine G. Titus
Vice 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 20th day of June, 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.