

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5698**

**PETITION OF EMIRA C. AND PAUL D. GWYNN**

(Hearing held January 9, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, February 15, 2002)

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)(2). The petitioners propose to a construct one-story addition that requires a nine (9) foot variance as it is within sixteen (16) feet of the rear lot line. The required setback is twenty-five (25) feet.

Herbert I. Wilens, the petitioner's contractor, appeared with Mr. Gwynn at the public hearing. Faye Miner and Kaiser J. Aziz and Jacqueline L. Borda, adjoining neighbors, appeared in opposition to the variance request.

The subject property is Lot 53, Block C, Rock Creek Hills Subdivision, located at 9810 Hill Street, Kensington, Maryland, in the R-90 Zone (Tax Account No. 01154654).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 14 x 17 foot one-story addition at the rear of the residence.
2. Mr. Wilens testified that the petitioner's residence is located on a very steep slope. Mr. Wilens testified that the property currently has water problems and that the petitioner is unable to use the rear yard. Mr. Wilens testified that the petitioner has a very shallow rear yard and that the neighboring properties have larger building envelopes.
3. Mr. Wilens testified that the houses on the street are all located on a steep hill and that the petitioner's rear yard has a steep drop in the topography. Mr. Wilens testified that the houses to the rear of the petitioner's lot are located at a lower level than the petitioner's lot.
4. Ms. Aziz , adjoining neighbor on Lot 67, testified that her lot is downhill from the petitioner's property and that only the trees and vegetation shown on Exhibit No. 13.1 separate the two properties. Ms. Aziz testified that the variance request would be destructive to her property, detrimental to her quality of life and create additional

- expenses in trying to control the water runoff from the petitioner's lot. See, Exhibit Nos. 13.2-8.
5. Ms. Aziz testified that they have installed a drainage system to direct the water runoff from the petitioner's property and that new construction would increase the runoff on their lot.
  6. Ms. Borda, adjoining neighbor on Lot 66, testified that her house is located in the middle of a hilly lot and that her lot is also located below the petitioner's property. Ms. Borda testified that in the past they have experienced major water problems as result of the water runoff from the petitioner's lot. See, Exhibit Nos. 9-1-2.
  7. Ms. Borda testified that they have removed approximately 25 trees that rotted because of the water runoff and have installed a complex drainage system to deal with the water runoff problems. See, Exhibit Nos. 14(a)-14(d).
  8. Mr. Gwynn testified that he has resided in his home for over 20 years and that the houses on Hill Street were built before the houses on Stoneybrook Drive. Mr. Gwynn testified that he was unaware of the water runoff problems and that this was his first time hearing of those problems.
  9. In response to the neighbors concerns, Mr. Wilens stated that the petitioner and he were unaware of the water runoff problems. Mr. Wilens stated that in addition to water runoff from the petitioner's property, Ms. Aziz and Ms. Borda's properties receive water runoff from Lots 54 and 55. Mr. Wilens stated that the water runoff problems could be solved and that the addition could not be located elsewhere on the petitioner's property.

### **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) and (d) 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 petitioner's lot has no peculiar topographical or other conditions that are not shared by the neighboring properties. The Board notes that the siting of improvements made to the property can not be considered in evaluating the requirements for a variance.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed addition may result in creating additional water runoff problems for the neighboring properties and would materially

impact the use and enjoyment for the neighboring and adjoining property owners.

The petition does not meet the requirements set forth in Section 59-G-1.3(a) and (d) of the Zoning Ordinance and the Board did not consider the other requirements for the grant of the variance request.

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.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, 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 15th day of February, 2002.

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Katherine Freeman  
Executive Secretary to the Board

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.