

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
(240) 777-6600  
(www.co.mo.md.us/council/board/html)

**Case No. A-5778**

**PETITION OF NIKI H. AND CHARLES A. ANDERSON**

(Hearing held July 10, 2001)

**OPINION OF THE BOARD**

(Effective date of Opinion, August 21, 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 variances from Section 59-C-1.323(b)(1). The petitioners propose to construct a garage addition that requires variances of three (3) feet as it is within five (5) feet of the side lot line and of twelve (12) feet as it reduces the sum of both side yards to thirteen (13) feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is twenty-five (25) feet.

Michael Namath, an adjoining neighbor on Lot 19, appeared in opposition at the public hearing.

The subject property is Lot 20A, Block 8, Regent Park Subdivision, located at 12032 Devilwood Drive, Potomac, Maryland, in the R-90 Zone (Tax Account No. 00092236).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 12 x 27 foot garage addition in the western side yard.
2. The petitioner testified that the garage could not be built in the rear yard because new construction would damage a mature tree and its roots. The petitioner testified that he does not want to remove the tree because it straddles the property line between his lot and Lot 19 and that the area between the tree and his residence has a steep slope.
3. The petitioner testified that parking structures are a common characteristic of the neighborhood and that the garage addition would be constructed of materials to match the residence.
4. Mr. Namath testified that the closeness of the proposed structure to his residence would impact the esthetics, the use and enjoyment of his home.

Mr. Namath testified that three of the four bedrooms in his house would be located near the garage addition, and that he had concerns about the safety of those bedrooms located so near the proposed garage.

### **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 petitioners' lot has no exceptional topographical or other conditions not shared with the adjoining and neighboring properties. The Board finds that the petitioners' property is a rectangular shaped lot that is consistent in shape and size with the other lots in the immediate neighborhood. See, Exhibit No. 9 (zoning vicinity map).

The Board notes that while the existence of the mature tree is a distinctive characteristic of the property, it is not an exceptional circumstance that is unique to the petitioners' property.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of three (3) feet from the required eight (8) foot side lot line setback and of twelve (12) feet from the required twenty-five (25) foot sum of both side yards for the construction of a garage addition are denied.

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 Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron Allison Ishihara Fultz, and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following 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 21<sup>st</sup> day of August, 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.