

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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([www.co.mo.md.us/council/board.html](http://www.co.mo.md.us/council/board.html))

**Case No. A-5780**

**PETITION OF RICHARD AND THELMA FARBER**

(Hearing held July 10, 2002)

**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 a variance from Section 59-C-1.323(b)(1). The petitioners propose to construct a one-story addition that requires a two (2) foot variance as it is within ten (10) feet of the side lot line. The required setback is twelve (12) feet.

The subject property is Lot 4, Block E, Stonegate Subdivision, located at 1 Butterchurn Court, Silver Spring, Maryland, in the R-200 Zone (Tax Account No. 00367485).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 12 x 16 foot one-story addition in the western side yard.
2. The petitioner testified that the addition could not be located in the rear yard because of a stand of large trees located near the house, a fish pond and a screened porch. See, Exhibit Nos. 10(a) thru 10(e). The petitioner testified that a garage is located in the eastern side yard.
3. The petitioner testified that new construction would be difficult in other areas of the lot as the property's front yard is hilly and the side yards drop off. The petitioner testified that the view of addition from the most impacted neighbor would be screened by the neighbors' garage.

**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 petitioner's lot has no exceptional topographical or other conditions and that the petitioner's lot is consistent in shape and size with the other lots in the neighborhood. See, Exhibit No. 7.

The Board finds that the existing conditions of the property do not create the need for a variance and that the existing conditions do not prevent new construction.

The petition does not meet the requirements of Section 59-G-1.3(a). The Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance of two (2) feet from the required twelve (12) foot side lot line setback for the construction of a one-story addition is 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 Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo 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.