

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5798

PETITION OF RALPH AND WENDY MILLER

(Hearing held September 11, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, October 11, 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 Sections 59-C-1.323(b)(1), 59-C-1.323(a)(1) and 59-B-3.1. The petitioners propose to construct: (1) a garage addition that requires variances of four (4) feet as it is within eight (8) feet of the side lot line and of 4.10 feet as it reduces the sum of both side yards to 20.90 feet; and (2) a covered porch that requires a variance of 5.84 feet as it is within thirty-two (32) feet of the established front building line. The required side lot line setback is twelve (12) feet, the required sum of both side yards is twenty-five (25) feet and the established front building line is 37.84 feet.

The subject property is Lot 71, Block A, Smithfield Subdivision, located at 8000 Herb Farm Drive, Bethesda, Maryland, in the R-200 Zone (Tax Account No. 00889617).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a garage addition and a covered porch.
2. The petitioners testified that they proposed to convert the existing rear-loading garage into a front-loading structure. The petitioners testified that the rear yard is used as a recreation area by the family and that the rear yard has a blind-turn area that could be a danger to occupants when vehicles enter the rear yard.
3. The petitioners testified that their lot narrows slightly in the rear yard and that the lot's topography slopes from the residence to the street. The petitioners testified that the property has poor drainage, which has caused water leakage in the basement.
4. The petitioners testified that the covered porch would address the water leakage issues and that the existing stoop's footprint would be used as the footprint for the proposed porch. The covered porch would provide a transition area before entering the residence.

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 by the neighboring properties and that the improvements proposed to address the water leakage issues do not create a zoning reason for the grant of the requested variance.

The Board further finds that the slight narrowing of the petitioners' rear yard is does not materially impact the use of the property and that the size of the petitioners' lot does not substantially differ from neighboring Lots 69 and 70. See, Exhibit No. 9.

The petition does not meet the requirements of Section 59-G-1.3(a). The Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of: (1) four (4) feet from the required twelve (12) foot side lot line setback and of 4.10 feet from the required twenty-five (25) foot sum of both side yards for the construction of a garage addition; and of (2) 5.84 feet from the required 37.84 feet established front building line for the construction of a covered porch are denied.

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:

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.

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 11th day of October, 2002.

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.