

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6175

PETITION OF MICHAEL N. HAYES

(Hearings held December 20, 2006 and January 10, 2007)

OPINION OF THE BOARD

(Effective date of Opinion, March 22, 2007)

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 Sections 59-C-1.535 and 59-B. The petitioner proposes the construction on an addition on the existing deck that requires a variance of twenty-two (22) feet as it is within eighteen (18) feet of the rear lot line. The required rear lot line setback is forty (40) feet.

Mark Marek of SSI Homes appeared with the petitioner at the public hearing.

The subject property is Lot 9, Block E, Seneca Whetstone Subdivision, located at 19213 Jericho Drive, Gaithersburg, Maryland, 20879, in the R-200 Zone (Tax Account No. 01783015).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 24 x 13.3 foot one-story addition on an existing deck.
2. The petitioner testified that the property's prior owner received a variance in 1989 for the construction of the existing deck and that the proposed construction would enclose the northwest section of the existing deck. The petitioner testified that the new construction will not expand or increase the footprint of the existing deck. See Exhibit Nos. 5(d) [floor plan] and 5(e) [construction details].
3. The petitioner testified that his property is an irregularly-shaped lot that is 10,000 square feet and that his lot is the smallest in the subdivision. The petitioner testified that the property is located in the R-200 Zone, which has a minimum lot size of 20,000 square feet. The petitioner

testified that the application of the required setbacks to his lot results in a building envelope that is 675 square feet. See Exhibit Nos. 9 [zoning vicinity map] and 13(a) [revised plat plan].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies 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 subject property is a small, irregular-shaped lot that is the smallest lot in its subdivision. The Board finds that the petitioner's 10,000 square foot lot is substandard for the R-200 Zone, which has a minimum lot size of 20,000 square feet and that the application of the required setbacks to the subject property results in a buildable envelope of 675 square feet.

The Board finds that these conditions are peculiar to the subject property and that the strict application of the zoning regulations will result in practical difficulties to and an undue hardship upon the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance request for the construction of an addition on an existing deck in the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

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

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of twenty-two (22) feet from the required forty (40) foot rear lot line setback for the construction of an addition on an existing deck is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(e) and 13(a).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Wendell M. Holloway, seconded by Catherine G. Titus, with Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 22nd day of March, 2007.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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.