

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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

**Case No. A-5739**

**PETITION OF RICHARD AND KATHY RIPLEY**

(Hearing held May 15, 2002)

**OPINION OF THE BOARD**

(Effective date of Opinion, June 14, 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 two-story addition that requires a three (3) foot variance as it is within five (5) feet of the side lot line. The required side lot line setback is eight (8) feet.

Robert Brennan, architect, appeared with the petitioners at the public hearing. Alice Witt, an adjoining neighbor on Lot 7, appeared in opposition to the variance request, and Christine Morgan appeared as a representative for the Woodside Park Civic Association.

The subject property is Lot 6, Block M1, located at 1118 Dale Drive, Silver Spring, Maryland, in the F-60 Zone (Tax Account No. 01432547).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a 24.33 x 14 foot two-story addition in the eastern side yard. The property is a corner lot located at the intersection of Alton Parkway and Dale Drive.
2. Mr. Brennan testified that the property's western side yard adjoins Alton Parkway, which is undeveloped parkland and that the front of the property has a steeply sloped hill. Mr. Brennan testified that the addition could not be located elsewhere on the property because it would have to be on a larger scale and would be more expensive to build. Mr. Brennan testified that the addition without a variance would result in very small rooms.
3. The petitioner testified that the variance is being requested to maintain the architectural design of the house, to prevent the removal of a large quantity of existing trees, and to keep costs to a minimum.
4. Ms. Morgan entered a letter from the Woodside Park Civic Association into the record. See, Exhibit No. 17. Ms. Morgan stated that she believes that the required setback is incorrect and should be verified with the Department of Permitting Services (DPS).

5. Ms. Witt testified that the proposed addition would be very close to the shared property lines and would be detrimental to the use and enjoyment of her property. A view of the petitioner's property from the Witt property was entered into the record as Exhibit No. 20. Ms. Witt testified that the a characteristic of the neighborhood is the steeply sloped lots and that the proposed addition negatively impact the view from her 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 (b) 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 property has no exceptional topographical or other conditions that are not shared by the neighboring and adjoining properties. The Board finds that the addition could be located elsewhere on the lot that would not visually impact the view for the neighboring property or require a variance.

The Board notes that in evaluating the requirements for a variance neither the individual circumstances of the petitioner nor the existing improvements on the property can be considered.

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

The Board finds that the addition, as proposed, is not the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b) above and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of three (3) feet from the required eight (8) foot side lot line setback for the construction of a two-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 Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, 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 14th day of June, 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.