

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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(www.co.mo.md.us/council/board.html)

Case No. A-5750

PETITION OF THOMAS A. AND H. G. LOHM

(Hearing held May 8, 2002)
(Resolution adopted June 26, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, September 19, 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 proposed expansion of the existing carport requires variances of five (5) feet as it is within seven (7) feet of the side lot line and of 1.60 feet as it reduces the sum of both side yards to 23.40 feet. The required side lot line setback is twelve (12) feet and the sum of both side yards is twenty-five (25) feet.

Roger K. Bain, Esquire, appeared with the petitioners at the public hearing.

The subject property is Lot 2, Block B, North Sherwood Forest Subdivision, located at 14412 Marine Drive, Silver Spring, Maryland, in the R-200 Zone (Tax Account No. 053224772).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to expand the existing carport located in the northern side yard.
2. The petitioner testified that his lot is located at the peak of the curve on Marine Drive and that the lot is the second smallest lot on the street. The petitioner testified that his receives runoff water from the lots located above him and that his lot has a swale located in the rear yard. The petitioner testified that because of the runoff water in the rear yard, the foundation for any new structures in this area would be washed away.
3. The petitioner testified that the Marine Drive slope drops about 20 feet from north to south. See, Exhibit Nos. 11(a), 11(b) and 11(g). Mr. Bain stated that the house, as originally sited, creates a practical difficulty for any new construction on the lot.

4. The record was left open at the public hearing on May 8, 2002, for the receipt of additional information on the impact of the drainage flow on the petitioners' property. The Board considered the additional information at its Worksession held on June 26, 2002.

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 and that neighboring Lots 9 and 10 on Bonifant Road and Lots 1, 3 in Block B, and Lots 2, 3 and 4 in Block A, on Marine Drive are similar in shape and size.

The construction proposed to address the drainage issues on petitioner's lot do not create a zoning reason for the grant of the requested variance. In addition, uniqueness or peculiarity for purposes of the evaluation of a proposed variance does not refer to the extent of improvements upon the property. (Umerley v. People's Counsel, 108 Md. App. 497, 506 (1996) citing North v. St. Mary's County, 99 Md. App. 502, 514 (1994). None of the other factors cited by the petitioner create an exceptional condition peculiar to petitioner's property.

The Board finds that the drainage flow and swale location in the rear yard would have no impact in the area proposed for the new addition.

The Board notes that the slope on Marine Drive affects all of the properties located on the street and that the slope on the petitioners' lot is characteristic of the other properties on the street.

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 a variance. Accordingly, the requested variances of five (5) feet from the required twelve (12) foot side lot line setback and of 1.60 feet from the required twenty-five (25) foot sum of both side yards 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 Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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 19th day of September, 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.