

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5949**

**PETITION OF GREG PEARSON**

(Hearing held January 14, 2004)

**OPINION OF THE BOARD**

(Effective date of Opinion, March 11, 2004)

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(a). The petitioner proposes to construct a two-story addition that requires an eleven (11) foot variance as it is within fourteen (14) feet of the street line. The required setback is twenty-five (25) feet.

Greg Pearson and Ronnie Biemans, the property owners, appeared at the public hearing.

The subject property is Lot 7, Block C, located at 9112 Warren Street, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 011417996).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct an 18 x 14.10 foot two-story addition.
2. The petitioners testified that the property is a corner lot located at the intersection of Luzerne Avenue and Warren Street. The petitioners testified their residence was built in 1939 and that at that time, Luzerne Avenue did not exist and that the property met the required setbacks. The petitioners testified that the construction of Luzerne Avenue made their property a corner lot and that this adversely impacts the use of their property.
3. The petitioners testified that the denial of the variance would create an economic hardship and that the internal design of the house makes it impractical to build an addition elsewhere on the property.

**FINDINGS OF THE BOARD**

Based upon the petitioners' 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 petitioners' lot is has no exceptional topographical or other conditions peculiar to the property and that the petitioners' lot is the largest lot in the immediate area. See, Exhibit No. 10 (zoning vicinity map). The Board further finds that new construction could built in other areas of the petitioners' property without the necessity of a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of eleven (11) feet from the required twenty-five (25) foot street line setback for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo 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.

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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 11th day of March, 2004.

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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.