

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6084

PETITION OF WILLIAM AND JOAN MCGLOCKTON

(Hearing held July 13, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, September 9, 2005)

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)(2), 59-C-1.328 and 59-B-3.1(a). The petitioners propose the construction of a two-story addition (deck/screened porch) that requires a nineteen (19) foot variance as it is within one (1) foot of the rear lot line, a variance of 1.50 feet as it is within 18.50 of the rear lot line and a variance of 1.21% to exceed the 35% maximum lot coverage. The petitioners also propose the construction of a deck that requires a variance of ten (10) feet as it is within one (1) foot of the rear lot line. The required rear lot line setback for the two-story addition is twenty (20) feet, the required rear lot line setback for the deck is eleven (11) feet, and the required maximum lot coverage is 35%.

Paul Jordan of Case Design represented the petitioners at the public hearing.

The subject property is Lot 133, Parcel D, Hickey and Offutt Subdivision, located at 8012 Ellingson Drive, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 02810172).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a two-story addition and a deck.
2. Mr. Jordan testified that the property received a prior variance in 1992 to connect the existing gazebo to the residence and that the proposed construction would enclose the existing gazebo into living space. Mr. Jordan testified that the petitioners' lot and the other lots along Ellingson Drive abut unbuildable M-NCPPC property and that the homes on these lots are set deep within the lots, resulting in shallow, unbuildable rear yards.

3. The petitioner testified that the variance request is to convert the existing gazebo into a sunroom and that his lot is the only lot on his side of the street without a deck. Mr. Jordan testified that the adjacent properties have added similar amenities to their rear yards.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 peculiar to the property. The Board further finds that the petitioners' lot meets the minimum lot size for the zone and that the lot is similar in size, shape and configuration as the other adjoining lots along the south side of Ellingson Drive. See, Exhibit No. 8 [zoning vicinity map].

The Board notes that for purposes of evaluation for the grant of a variance that "the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring 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).

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 variances of nineteen (19) feet from the required twenty (20) foot rear lot line setback, of 1.50 feet from the required twenty (20) foot rear lot line setback, and of 1.21% to exceed the required maximum lot coverage of 35% for the construction of a two-story addition and a variance from the required eleven (11) foot rear lot line setback for the construction of a deck are denied.

The Board adopted the following Resolution:

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

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 9th day of September, 2005.

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.