

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6160**

**PETITION OF JOSEPH WONG**  
(Hearing held October 11, 2006)

**OPINION OF THE BOARD**  
(Effective date of Opinion, December 14, 2006)

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-1.1.323(b)(1). The existing carport requires a variance of four (4) feet as it is within four (4) feet of the side lot line and the existing carport also reduces the sum of both side yards to thirteen (13) feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is eighteen (18) feet.

Marie Wagner, a neighbor, appeared in opposition to the variance request.

The subject property is Lot 14, Block 5, Newport Hills Subdivision, located at 3613 Sandy Court, Kensington, Maryland, 20895, in the R-60 Zone (Tax Account No. 01363118).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner seeks a variance for the existing 30 x 10 foot carport.
2. The petitioner testified that the street he lives on is on a cul-de-sac and that the street has a parking problem. The petitioner testified that he explored several options for covered parking on his lot, but that those options would not be pleasing to view. The petitioner testified that the existing structure is six poles with a roof that has siding and shingles to match the house. The petitioner testified that he did not believe that he needed a building permit to construct a poled structure. See Exhibit Nos. 7(a)-(c) and 13 [photographs] and 12 [structural diagram of proposed carport].

3. The petitioner testified that his house is sited on a hill and that the topography of the lot slopes downward and it is very irregular. The petitioner testified that his lot is irregularly shaped, it is narrow at the front of the lot, then widens in the middle, and narrows again at the rear yard. The size of the subject property is 11,495 square feet. See Exhibit No. 8 [zoning vicinity map].
4. The petitioner testified that the carport is at the end of the driveway and that a portion of his driveway adjoins his neighbor's driveway on Lot 15. The petitioner testified that the carport can not be located in the rear yard because of two existing sheds and that locating a carport in the rear yard would require a lot of regrading.
5. Ms. Wagner testified that cul-de-sacs are common in the neighborhood and that this is not a unique characteristic. Ms. Wagner testified that the subject property has no topographical or other characteristics that are not shared with the neighboring properties and that the petitioner's request does not satisfy any of the zoning ordinance requirements for a variance.

### **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 although the subject property is irregularly shaped, the lot is almost twice the minimum lot size for the zone. The Board finds that the property does have a gentle slope to the topography, but that this is a characteristic shared with the other properties in the neighborhood and that the topography has not prevented development on the petitioner's lot. The Board notes that for purposes of evaluation for the grant of a variance that uniqueness or peculiarity does not refer to the extent of the improvements on the property or the location of the house. (*Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, 103 Md. App. 310 (1995)*).

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 four (4) feet from the required eight (8) foot side lot line setback and of thirteen (13) feet from the required eighteen (18) foot sum of both side yards requirement for the existing carport are denied.

The Board adopted the following Resolution:

Board member Wendell M. Holloway was necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo 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.

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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 14th day of December, 2006.

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Katherine Freeman  
Executive Director

**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.

