

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

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

Case No. A-6396

PETITION OF MARC ELRICH
(Hearing held October 3, 2012)

OPINION OF THE BOARD
(Effective date of Opinion, October 19, 2012)

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)(2). The petitioner proposes the construction of a second-story addition that requires a variance of 5.5 feet as it is within 14.5 feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

The subject property is Part of Lot 45, Block 53, Flower Avenue Park Subdivision, located at 8001 Sligo Creek Parkway, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 0176573).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a second-story addition over the existing one-story footprint.
2. The petitioner testified that according to the land records his house was originally constructed in 1933, but that the date may be as early as 1918, 1919, 1920 from evidence found in the walls of the house. He testified that the subject property was once a part of larger lot that was subdivided in 1942 and that his lot was on the part that was conveyed by deed to create a new lot. See Exhibit Nos. 4(a) [site plan], 4(b) [subdivision plat], 8 [deed].
3. The petitioner testified that his house is located in the required rear yard setback, which is an alley. He testified that the alley is a paper road known as Edinburgh Lane. He testified that his house is the only house on the block in violation of the required rear yard setback and that the other neighboring houses are built at a lower plateau than his house. He testified that the lot's soil is filled with rubble such as cinder blocks and all kinds of bricks, requiring excavation for any new construction on the lot.

4. The subject property is an irregularly-shaped lot, with the house sited at the rear of the property, over 160 feet from Sligo Creek Parkway. The petitioner testified that the lot's topography drops 150 feet from the front yard to the rear yard and that any modification to the existing house would require a variance. He testified that the proposed construction would not expand or increase the footprint of the existing house. He testified that new construction would also impact the existing mature vegetation, requiring either the removal of the existing trees or damage to the roots of the existing trees. See Exhibit Nos. 9(a) [zoning vicinity map] and 9(b) [aerial photo].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 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 existing house, which was built in the 1930s, is located in the rear yard setback, known as Edinburgh Lane. The Board finds that the subject property is an irregularly shaped lot, with topography that drops 50 feet from the front yard to the rear yard. The Board finds that the petitioner's lot is located at a lower plateau than the other neighboring properties. The Board finds that the proposed construction will not increase or expand the footprint of the existing house. The Board notes that the topography of the lot is filled with rubble such as cinder blocks and all kinds of bricks.

The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

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

The Board finds that the requested variance for the construction of a second-story addition is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

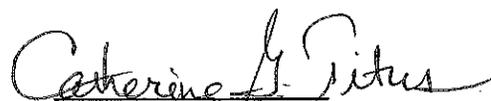
Accordingly, the requested variance of 5.5 feet from the required twenty (20) foot rear lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 5(a) through 5(c).

The Board adopted the following Resolution:

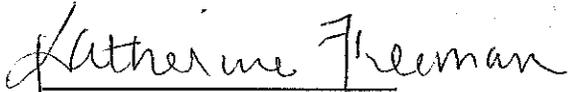
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Walter S. Booth was necessarily absent and did not participate in this Resolution. On a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, the Board adopted the foregoing Resolution.



Catherine G. Titus
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 19th day of October, 2012.



Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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.