

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5613

PETITION OF CINDY WILLIAMS
(Hearing held July 11, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, August 31, 2001)

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 to construct a one-story addition that requires an eleven (11) foot variance as it is within nine (9) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 2, located at 9233 Singleton Drive, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00553963).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a glass-enclosed one-story addition.
2. Herb Wilens, the petitioner's contractor, testified that the property is an unusually shaped lot with a notch at the southeast corner of the property. Only Lots 2 and 3 share this characteristic in the subdivision. Mr. Wilens testified that the variance is required because of the lot's indentation and that the variance is only needed at the southeast corner of the proposed addition.
3. Mr. Wilens testified that the one-story addition would replace an existing deck and that the addition would be built on the footprint of the deck. Mr. Wilens testified that the addition could not be moved backward on the lot because of an existing stairwell.
4. The petitioner testified that a 6-foot fence surrounds the property and that the addition would back up to a neighbor's garage. See, Exhibit Nos. 11(c) and 11(d)
5. Mahmoud El-Darwish, the adjoining neighbor on Lot 3, appeared at the public hearing in support of the variance request.

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 property is an oddly shaped lot with an indentation at its southeast corner. The Board finds that this is an exceptional condition that is unique and peculiar to the property, which would result in practical difficulties for and an undue hardship upon the property owner if the variance were denied.

The Board further finds that the proposed construction would be built on the footprint of an existing deck.

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

The Board finds that the variance requested for the construction of one-story addition is the minimum reasonably necessary to overcome the property's exceptional conditions.

- (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 proposed construction will continue the residential use of the property and 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 record contains no testimony or correspondence in opposition to the variance and the variance request has received the support of the most impacted neighbor. The Board finds that the addition would be screened by an existing fence and would adjoin a neighboring garage. The Board further finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of eleven (11) feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, 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 and 5(a) through 5(d).

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 Donald H. Spence, Jr., Chairman, seconded by Louise L. Mayer, with Donna L. Barron, in agreement, the Board adopted the foregoing Resolution. Board members Angelo M. Caputo and Mindy Pittell Hurwitz were necessarily absent and did not participate in this 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 31st day of August, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-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.