

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6140

PETITION OF MARIJKE TORFS
(Hearing held June 14, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, September 8, 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 variances from Sections 59-B-5.3(b) and 59-C-1.323(a). The existing single-family dwelling requires a variance of 2.08 feet as it is within 4.92 feet of the side lot line and the petitioner proposes the construction of a second-story addition that requires a variance of eight (8) feet as it is within seventeen (17) feet of the streetline (Second Avenue) and the construction of a roof that requires a variance of three (3) feet as it is within twenty-two (22) feet of the front lot line. The required side lot line setback is seven (7) feet, the required streetline setback is twenty-five (25) feet, and the required front lot line setback is twenty-five (25) feet.

Dana Haden, an architect, represented the petitioner at the public hearing.

The subject property is Lot 20 and Part of Lot 19, Block 15, Pinecrest Subdivision, located at 6600 Allegheny Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 03170063).

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

EVIDENCE PRESENTED TO THE BOARD

1. The existing single-family dwelling and the proposed construction of a second-story addition and a roof require variances.
2. In response to questions from the Board, Ms. Haden testified that the subject property is located in a section of Takoma Park that was annexed by Montgomery County in 1997 and that the subject property is an exceptionally narrow, 25-foot wide, shallow corner lot at the intersection of Allegheny and Second Avenues. Ms. Haden testified that the existing house is a non-conforming structure, which is currently sited in the northern front yard setback, the western side yard setback

and the eastern streetline setback. Ms. Haden testified that none of the houses that front on Second Avenue conform to the required front lot line setback. See Exhibit No. 4(b).

3. Ms. Haden testified that the proposed construction will not extend beyond the footprint of the existing house and that the proposed construction will reuse the house's existing foundation. Ms. Haden testified that the proposed construction will pull out the first floor footprint to match the existing basement footprint and modify the rooflines. Ms. Haden testified that if the applicable setbacks required for the zone were applied to the subject property, the resulting building envelope would be 12 feet wide.
4. Ms. Haden testified that the roofline of the existing house is low pitched and that the rear section of the house has a flat roof. Ms. Haden testified that the house has a bedroom on the second floor which does not meet the current building code requirements because of its height and that the proposed construction will maintain the design of the house, but will steepen the roof pitch to raise the height of the house's rear section 3 or 4 feet to meet the living space building code requirements. See Exhibit Nos. 7(a) through 7(f) [photographs].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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 dwelling is currently located in the northern front yard setback (Allegheny Avenue), in the western side yard setback, and in the eastern streetline setback (Second Avenue). The Board finds that the proposed construction will not increase or expand the footprint of the existing dwelling and that the application of the required setbacks to the subject property would result in a buildable envelope that would be 12 feet in width.

The Board finds that although the subject property appears to be configured similarly to the neighboring lots, the lot was platted in 1912 prior to the existence of zoning standards, and developed under the Prince George's County development standards, which

have been incorporated into the Montgomery County Zoning Ordinance standards via Section 59-B-6.2 in 1997. See Exhibit No. 8 [zoning vicinity map].

Section-B-6.2 Existing building and structures. States in part:

“Any building or structure which was lawful under the Prince George’s County Zoning Ordinance in effect on June 30, 1997, and was constructed with the Annexation Area under a building permit issued prior to February 10, 1998, is a conforming building or structure in Montgomery County and may be:

- (a) altered, renovated, or enlarged in accordance with the Montgomery County Zoning Ordinance,”

The Board finds that the combined historical and developmental circumstances of the subject property are exceptional in their application to the lot and clearly demonstrate that the strict application of the Zoning Ordinance would result in practical difficulties to the property owner.

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

The Board finds that the variances requested for the existing single-family dwelling and the construction of a second-story addition and a roof are the minimum reasonably necessary to overcome the unique hardship imposed by the strict application of the zoning ordinance.

- (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 variances 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 materially change the view from the surrounding properties and that the

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

Accordingly, the requested variance of 2.08 feet from the required seven (7) foot side lot line setback for the existing single-family dwelling; a variance of eight (8) feet from the required twenty-five (25) foot streetline setback (Second Avenue) for the construction of a second-story addition; and a variance of three (3) feet from the required twenty-five (25) foot front lot line setback (Allegheny Avenue) for the construction of a roof are 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 witness, 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 4(b) and 5(a) through 5(f).

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.

On a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Donna L. Barron, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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 8th day of September, 2006.

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.