

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5635

PETITION OF JAY AND ANNE KOLYER

(Hearing held September 19, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, October 18, 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)(1). The petitioners propose to install an air conditioning unit that requires a six (6) foot variance as it is within four (4) feet of the side lot line. The required setback is ten (10) feet.

The subject property is Lot 9, Block D, Whitehall Manor Subdivision, located at 7408 Honeywell Lane, Bethesda, Maryland, in the r-60 Zone (Tax Account No. 00649153).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to install an air conditioning unit in the northern side yard.
2. The petitioners stated that their rear yard slopes upward and that the slope is not a characteristic shared by the neighboring properties. The upward slope of the rear yard prevents the air conditioning unit from being located in this area. The location of an air conditioning unit in the southern side yard would also require a variance and the noise from the air conditioning unit would adversely impact the neighboring residence that adjoins the petitioners' southern boundary.
3. The petitioners stated that the air conditioning unit will be located behind a noise abatement fence. The petitioners' northern side yard adjoins a school and the air conditioning would be located in an area that abuts the school's playground and parking area. The record contains a letter of support from the Bethesda Community School. See, Exhibit Nos. 10(b) through 10(d).
4. The petitioners stated that their rear and side yards are boarded by a privacy fence and that the air conditioning unit would not be visible to the neighboring properties.

FINDINGS OF THE BOARD

Based on the petitioners' 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 severe slope of the rear yard is a condition that is unique and peculiar to the petitioners' property and that the strict application of the regulations would result in practical difficulties for the property owners.

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

The Board finds that the variance requested for the installation of an air conditioning unit is the minimum reasonably necessary to overcome the unique conditions of the property.

(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 would 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 Board finds that the air conditioning unit would adjoin the playground and parking areas for a neighboring school. The Board further finds that the air conditioning unit would be screened by both a noise abatement fence and a privacy fence, and would not be detrimental to use and enjoyment of the neighboring properties. The record contains no testimony or correspondence in opposition to the variance request. The record does contain a letter of support from the Bethesda Community School, the most impacted neighbor.

Accordingly, the requested variance of six (6) feet from the required ten (10) foot side lot line setback for the installation of an air conditioning unit is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their 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(c).

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 Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing 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 18th day of September, 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.