

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5638

PETITION OF TANJA AND THOMAS E. CALLAHAN

(Hearing held September 26, 2001)
(Continuation Hearing held October 10, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, November 8, 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(a). The petitioners propose to construct a one-story addition that requires a 13.50 foot variance as it is within 26.50 feet of the side street lot line. The required setback is forty (40) feet.

The subject property is Lot 9, Block A, Ednor Acres Subdivision, located at 1201 Hornell Drive, Silver Spring, Maryland, in the RC Zone (Tax Account No. 86733527).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a one-story addition in the western side yard.
2. The petitioners testified that the property is a corner lot, located at the intersection of Gadsden Avenue and Hornell Drive, with the residence facing Hornell Drive. The petitioners testified that a 12-foot public utility easement runs along the boundary of the properties located on Gadsen Avenue.
3. The petitioners testified that their lot is narrower than most of the neighboring properties. The petitioners testified that their septic system is located in the rear yard and that also located in the rear yard is a swimming pool that was installed by the prior owners.
4. The petitioners testified that they plan to demolish an existing detached garage and use a part of the garage's footprint for the addition. The petitioners testified that the existing vegetation and trees would screen the addition.

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 property is a narrow lot with a septic system located in the rear yard, also located in the rear yard is a swimming pool that was installed by the prior owners. The property is additionally impacted by a public utility easement that runs along the western boundary at Gadsden Avenue.

The Board finds that the lot's exceptional narrowness, coupled with the existing septic system and the public utility easement are extraordinary conditions that are peculiar and unique to the property, and that the strict enforcement of the regulations would result in practical difficulties for and an undue hardship upon the property owners were the variance to be denied.

- (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 one-story addition 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 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 request. The proposed construction would be screened by the existing the vegetation and trees and the Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 13.50 feet from the required side street lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their 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) through 4(b) and 5(a) through 5(e).

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 Angelo M. Caputo, with Louise L. Mayer and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the foregoing Resolution. Board Chairman Donald H. Spence, Jr., was necessarily absent and did not participate in this Resolution.

Donna L. Barron
Vice 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 8th day of November, 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.