

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5893

PETITION OF KEIJI TASKAKI AND ANN ROSSILI

(Hearing held July 9, 2003)

OPINION OF THE BOARD

(Effective date of Opinion, August 12, 2003)

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 Section 59-C-323(b)(2). The existing single-family dwelling requires a four (4) foot variance as it is within sixteen (16) feet of the rear lot line and the proposed construction of a screened porch requires a twelve (12) foot variance as it is within eight (8) feet of the rear lot line setback. The required rear lot line setback is twenty (20) feet.

Douglas N. Wathingira, a contractor, appeared with the petitioners at the public hearing.

The subject property is Lot 2, Block H, Maplewood Subdivision, located at 5202 Benton Avenue, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00565697).

Decision of the Board: Requested variance for the existing dwelling **granted**.
Requested variance for the screened porch **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The existing single-family dwelling is currently sited in the property's rear yard setback and the petitioners propose to construct a screened porch in the rear yard.
2. The petitioner testified that their lot is a uniquely, trapezoidal-shaped lot. The petitioner testified that the property's rear yard is steeply sloped and has an angled lot line. The petitioner testified that the rear yard is impacted by both its shape and its topography.
3. The petitioner testified that new construction would be less expensive if built in the rear yard and that the construction would be located where there is an existing entrance/exit to the residence. Mr. Wathingira testified that the porch would be built on an existing deck. In response to questions, Mr. Wathingira stated that the sloping topography was shared with the neighboring lots.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance for the screened porch must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 petitioners' lot has no exceptional topographical or other conditions peculiar to the property that are not shared by the neighboring properties. The Board notes that while the shape of the petitioners' lot is distinct, the shape of the lot is similar to adjoining Lots 1 and 5. See, Exhibit No. 7 (zoning vicinity map).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of twelve (12) feet from the required twenty (20) foot rear lot line setback for the construction of a screened porch is denied.

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance for the existing single-family dwelling 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 existing dwelling is currently sited in the rear yard setback. The Board finds that is an exceptional circumstance and that the strict application of the regulations would result in practical difficulties for 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 variance request for the existing single-family dwelling 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 existing dwelling continues 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 there will be no change to the existing dwelling and that the requested variance will not be detrimental to the use and enjoyment of the neighboring.

Accordingly, the requested variance of four (4) feet from the required twenty (20) foot rear lot line setback for the existing single-family dwelling 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.

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 Allison Ishihara Fultz, seconded by Lousie L. Mayer, 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 12th day of August, 2003

Katherine Freeman
Executive Secretary to the Board

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.