

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6148**

**PETITION OF MAURA LYNCH AND MALCOLM BENGÉ**

(Hearing held July 19, 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 a variance from Section 59-C-1.323(b)(2). The petitioners propose the construction of a one-story addition that requires a four (4) foot variance as it is within sixteen (16) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 5, Block A, Maplewood Subdivision, located at 9302 Kingsley Avenue, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 00565414).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of an 11.6 x 18.6 foot one-story addition.
2. The petitioners testified that their property is a small, irregularly shaped lot. The petitioners testified that the intersection of Kingsley and Acacia Avenues forms a V at the end of the lot next to theirs, creating a severe angle to the rear lot line of their property. The petitioners testified that the only other lot with this characteristic is Lot 7, which backs up to their lot. The petitioners testified that most lots in the neighborhood are rectangular in shape. See Exhibit Nos. 4 [site plan] and 8 [zoning vicinity map].
3. The petitioners testified that the west side of their property is 97 feet in length, while the east side is 71 feet in length, resulting in a very shallow buildable envelope. The petitioners testified that their lot is 5,055 square feet and that originally the lot was larger, but that 710

square feet was sold to the neighbor to the east of their lot. The petitioners testified that they do not know why, but believe that the 710 square feet was deeded to the neighbor for the construction of a driveway.

4. The petitioners testified that the proposed construction will not change the roofline of the house and that the proposed construction will be incorporated into the design of the house. The petitioners testified that their rear yard has mature vegetation and a solid plank fence that will provide screening for the proposed 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 Board finds that the subject property is 5,055 square feet in size and that the lot is substandard for the R-60 Zone. The Board finds that subject property is a shallow, irregularly-shaped lot that is 97 feet in length at its western side yard boundary and 71 feet in length at its eastern side yard boundary, resulting in a very constrained buildable envelope. The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon 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 construction of a one-story addition 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 proposed construction will continue 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 the proposed construction will be screened by mature vegetation and a plank fence and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of four (4) 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 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 and 5.

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 Donna L. Barron, with Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution. Board member Angelo M. Caputo was necessarily absent and did not participate in this Resolution.

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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.

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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.