

CORRECTED OPINION

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**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-5878

PETITION OF OSCAR AND ADRIANA CAMACHO
(Hearing held June 11, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, August 21, 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 Sections 59-C-1.323(a), 59-C-1.323(b)(2) and 59-C-1.323(b)(1). The petitioners propose to construct a new single-family dwelling that requires variances of 7.62 feet as it is within 23.38 feet of the front lot line, of 1.75 feet as it is within 18.25 feet of the rear lot line and of 1.82 feet as it is within 5.18 feet of the side lot line.

The required front lot line setback is thirty-one (31) feet, the required rear lot line setback is twenty-five (25) feet and the required side lot line setback is seven (7) feet.

Jody S. Kline, Esquire, Anthony Wilder, designer/builder, and Marian Mitchell, designer/builder, represented the petitioners at the public hearing.

David Brown, Esquire, represented Xenia Shroff, an adjoining property owner at 6214 Madawaska Road, at the public hearing.

Carolyn Hollis, a neighboring property owner at 6117 Madawaska Road, appeared in opposition to the variance request.

The subject property is Lot 59, Block 24, Glen Echo Heights Subdivision, located at 6216 Madawaska Road, Bethesda, Maryland, 20816, in the R-90 Zone (Tax Account No. 00502133).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners withdrew the requested 1.82 foot variance for the side lot line at the public hearing. The newly proposed single-family dwelling will be relocated, eliminating the need for the variance from the side lot line setback.

2. The petitioners propose to demolish the existing dilapidated structure and re-construct a new two-story single-family dwelling. The existing dwelling is a 28.8 x 24.8 foot, one and one-half story structure. See, Exhibit No. 25(c) [photograph].
3. Mr. Kline stated that the property is an irregularly-shaped lot, which is shallower than most of the adjoining and confronting properties and that the lot is approximately 5,285 square feet. Mr. Kline stated that the west side of the lot is 62.70 feet in length, that the east side of the lot is 98.98 feet in length, and that the rear yard boundary has a 45 degree angle. Mr. Kline stated that the proposed structure will be sited the same distance from the front lot line as the existing structure. See, Exhibit No. 24 [site plan/existing house footprint/proposed house footprint overlay].
4. Mr. Kline stated that the roof's eaves/overhang of the newly proposed dwelling will extend 1.82 feet from the structure. Section 59-B-3.3 of the Zoning Ordinance states "Cornices and eaves may project 2½ feet or less over any court or yard". See, Exhibit No. 24 [proposed house footprint overlay].
5. Mr. Wilder testified that the depth of the petitioners' lot creates a very restrictive building envelop and that the dwelling was designed so as to not overwhelm the neighboring homes. Mr. Wilder testified that the house has a hip-roof to prevent the house from having a box-like appearance and that the proposed structure will be in harmony with the homes in the neighborhood.
6. Ms. Mitchell testified that the existing dwelling is 18 feet in height, and that the proposed dwelling will be 24½ feet in height. The maximum height for the zone is 35 feet.
6. Ms. Hollis testified that she is opposed to any variances for front lot line setbacks because they would obstruct the line-of-sight for the houses on the street.
7. Mr. Brown stated his interpretation of the 1930 Zoning Ordinance for the record and stated that Mrs. Shroff has no objections to the petitioners' revised plans for the variance request.

FINDINGS OF THE BOARD

Based on the petitioners' 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 petitioners' property is approximately 5,285 square feet, which is substandard for the lot size in the R-90 Zone. The property is an unusually shaped lot with an angled rear lot line. The property's western side yard has a depth of 12½ feet. The Board finds that these are exceptional circumstances and that the strict application of the regulations would result in practical difficulties for the property owners were the variances to be denied.

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

The proposed single-family dwelling will be sited the same distance from the front lot line as the existing dwelling. The proposed dwelling will be 24½ feet in height, which is below the 35 foot maximum height required by the Zoning Ordinance. The Board finds that the variances requested for the construction of a new single-family dwelling are 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 request variances will continue the residential use of the property and the design of the proposed dwelling will be in harmony with the homes in the neighborhood. The Board finds that the variances can be granted without impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The most impacted neighbor supports the variance request and the Board finds that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

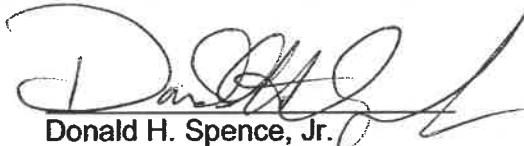
Accordingly, the requested variances of 7.62 feet from the required thirty-one (31) foot established front building line and of 1.75 feet from the required twenty (20) foot rear lot line setback for the construction of a new two-story single-family dwelling are granted. Also if required, a variance for the eaves/overhang of the roof the new two-story single-family dwelling is granted. The proposed construction is subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, the testimony of their witnesses and the representations of their attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 25(a) through 25(c), 28 and 29.

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 Donna L. Barron, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, and Allison Ishihara Fultz, in opposition, 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 21st 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.