

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6395

PETITION OF KERRY DANNER-MCDONALD
(Hearing held November 7, 2012)

OPINION OF THE BOARD
(Effective date of Opinion, November 30, 2012)

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 petitioner proposes the construction of a second-story addition that requires a variance of twelve (12) feet as it is within thirteen (13) feet of the front lot line (Lee Avenue). The required front lot line setback is twenty-five (25) feet.

Jay McDonald, the petitioner's husband, and Richard Vitullo, an architect, represented the petitioner at the public hearing.

The subject property is Lot 1, S. S. Carrols Addition to Takoma Park Subdivision, located at 7336 Carroll Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 01057490).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a second-story addition.
2. Mr. Vitullo testified that the subject property is an irregularly-shaped lot located at the intersection of Carroll and Lee Avenues. He testified that the property's acutely, angled southern side yard boundary, Lee Avenue, severely constricts the property's buildable envelope. He testified that as a result of the angled Lee Avenue boundary, a portion of the existing house is sited in the required setback, making the house a non-conforming structure. See Exhibit Nos. 4(a) through 4(c) [site plans] and 8 [zoning vicinity map].
3. Mr. Vitullo testified that the property's buildable area is a narrow, oddly-shaped, 600-square-foot section in the northern side of the rear yard. He testified that the buildable area located within the 600-square-foot area are five, large trees. He testified that the Takoma Park tree ordinance requires that any tree that is damaged or

removed by construction must be replaced by a very complicated formula dictated by the Takoma Park tree ordinance. See Exhibit Nos. 5(a) [front elevation], 5(b) [side elevation], 5(c) [rear elevation].

4. Mr. Vitullo testified that the subject property is also located in the historic district. He testified that any addition built in the historic district cannot be higher than an existing house ridge and that the existing house ridge is too low to be usable. He testified that the proposed construction would raise the house ridge four feet and that the proposed construction would not increase the existing footprint of the house. He testified that there will be little visible change in the appearance of the house's raised rear roof ridge. See Exhibit No. 10(b) [isometric of site].

FINDINGS OF THE BOARD

Based on the petitioner's 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 irregularly-shaped lot with an acutely angled southern side yard boundary. The Board finds that a portion of the existing dwelling is located in the required southern side yard setback as a result of the irregular shape of the lot. The Board further finds that subject property's buildable area is limited a 600-square-foot section of the rear yard and that this area of the property has five mature trees. The Takoma Park tree ordinance prevents construction in areas of a property that require removal or damage to existing trees.

The Board notes that the subject property is located in the Takoma Park historic district and must comply with the historic development standards that limit the height of the ridge of the existing house. The Board notes that the proposed construction will raise the ridge of the house by four feet and will not materially impact the view of the rear ridge of the house. The Board finds that the above are 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 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 variance requested will not be detrimental the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of twelve (12) feet from the required twenty-five (25) foot of the front lot line setback (Lee Avenue) for the construction of a second-story addition 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 his witness, 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(c) and 5(a) through 5(k).

The Board adopted the following Resolution:

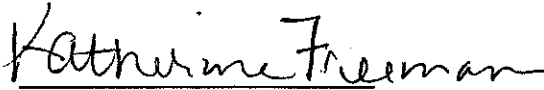
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Stanley B. Boyd and Catherine G. Titus, Chair, in agreement, the Board adopted the foregoing Resolution.


Catherine G. Titus

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 30th day of November, 2012.



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.