

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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(www.co.mo.md.us/council/board.html)

Case No. A-5776

PETITION OF SALLY K. GREANY AND JOHN R. DUNKIN

(Hearing held July 10, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, August 16, 2002)

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-1.323(a). The petitioners propose to construct a one-story addition that requires a 6.50 foot variance as it is within 30.50 feet of the front lot line and a variance of 28.50 feet for the existing single-family dwelling as it is within 11.40 feet of the front lot line. The required front lot line setback is forty (40) feet.

Jeffrey Banner, architect, represented the petitioners at the public hearing.

The subject property is Parcel 620, Layhill Subdivision, located at 1828 Bonifant Road, Silver Spring, Maryland, in the R-200 Zone (Tax Account No. 03115585).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a one-story addition at the rear of the existing residence.
2. Mr. Banner testified that the original house was built close to the road when it was constructed in 1820. The existing house is a non-conforming structure currently sited in the setback. Mr. Banner testified that Bonifant Road has been widened twice, bringing the house closer to the road.
3. Mr. Banner testified that the Department of Permitting Services (DPS) designated the eastern side yard of the property as a front yard, requiring a variance for the proposed construction. See, Exhibit No. 4. Mr. Banner testified that the addition is not visible from the road and that the new construction does not change the front footprint of the house or brings the house any closer to the road.

4. The petitioners testified that construction on the house was started earlier, but problems with the issued permits resulted in a Stop Work Order, which left the existing residence open to the elements. The petitioners testified that they have spoken with their neighbors and that their neighbors support 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.

1. The petitioners' residence is 150 year-old structure sited in the front yard setback. The street at the front of the property, Bonifant Road, has twice been widened, bringing the road closer to the existing house. The Board finds that this is an exceptional circumstance and that the property has been negatively impacted by the widening of Bonifant Road.

2. Additionally, the Board finds that the DPS designation of the property's eastern side yard as a front yard also negatively impact the property requiring the petitioner to meet a greater setback requirement.

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

The Board finds that the variances requested for the existing house and the one-story addition are the minimum reasonably necessary to overcome the exceptional circumstances.

(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 existing residence and the one-story addition will continue the residential use of the property and the variances 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 one-story addition will not be visible from the front of the property and that the grant of the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring

properties. The record contains no correspondence or testimony in opposition to the variance request.

Accordingly, the requested variances of 6.50 feet from the required forty (40) foot front lot line setback for the construction of a one-story addition and of 11.40 feet from the required forty (40) foot front lot line setback for the existing single-family dwelling are 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 variances.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4, 5(c)-5(d) and 6(a)-6(b).

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 Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following 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 16th day of August, 2002

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.