

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5927

PETITION OF CRISTIN C. FAIR
(Hearing held November 12, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, December 22, 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-1.323(a). The existing single-family dwelling requires a variance of 4.50 feet as it is within 20.50 foot of the side street lot line (Sherman Avenue) and the proposed construction of a one-story addition requires a variance of three (3) foot variance as it is within twenty-two (22) feet of the side street lot line (Sherman Avenue). The required side street lot line setback is twenty-five (25) feet.

The subject property is Parcel N656, located at 7500 Hancock Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 01075990).

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

EVIDENCE PRESENTED TO THE BOARD

1. The existing single-family dwelling is currently sited in the property's western side street setback (Sherman Avenue) and the petitioners propose to construct a one-story addition at the rear of the existing dwelling.
2. The petitioners testified that the property is an historic site and that the original structure was built as a corner-store. The petitioners testified that the neighborhood's setbacks were established after the structure was built.
3. The petitioners testified that a two-story addition will be built in the eastern section of the property and that a one-story addition will connect the two-story addition to the existing residence. The one-story addition will be located at the rear of the existing residence, however, since the existing residence is in the setback, the proposed one-story addition requires a variance. See, Exhibit No. 4 (site plan).

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 existing single-family dwelling is located in the western side street setback. A two-story addition is proposed for the northeast section of the property that meets the required setbacks for the zone. A one-story addition will be built at the rear of the existing residence that will connect the residence to the two-story addition. The one-story connector addition requires a variance. The Board finds that these are exceptional circumstances and that the strict application of the regulations will result in practical difficulties for the property owners.

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

The Board finds that the requested variances for the existing single-family dwelling and a one-story addition 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 Board finds that the proposed construction 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 proposed addition will be built further away from the property's boundary lines than the existing dwelling and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 20.50 feet for the existing single-family dwelling as it is within 4.50 of the required twenty-five (25) foot side street lot line setback (Sherman Avenue) and of three (3) feet for the proposed construction of a one-story addition as it is within twenty-two (22) feet of the required twenty-five (25) foot side street lot line setback (Sherman Avenue) are 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(a) through 5(d).

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 Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer 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 21st day of December, 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.