

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-5942**

**PETITION OF LES BAKER**

(Hearing held December 17, 2003)

**OPINION OF THE BOARD**

(Effective date of Opinion, February 11, 2004)

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 petitioner seeks a variance of eleven (11) feet for the existing single-family dwelling as it is within four (4) feet of the street line (Lexington Street) and a variance of 3.91 feet for the proposed construction of a two-story addition as it is within 11.08 feet of the street line (Lexington Street). The required street line setback is fifteen (15) feet.

William Bonstra and Brian Forehand, architects, appeared with Les and Gina Baker, the property owners, at the public hearing.

The subject property is Lot 12, Block 6, located at 3613 Farragut Avenue, Kensington, Maryland, 20895, in the R-60 Zone (Tax Account No. 01021304).

Decision of the Board: Requested variance for the existing single-family dwelling **granted**.  
Requested variance for a two-story addition **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners seek variances for the existing single-family dwelling and for the proposed construction of a two-story addition.
2. The petitioners testified that they have resided in the house since 2001 and that the new construction would provide additional living space because the size of their family has grown. The petitioners testified that the new construction will be in harmony with the neighboring homes and that their neighbors support the variance request.
3. Mr. Forehand testified that the existing dwelling is located in the western street line setback and that a one-story addition built in the 1940s or 1950s is also located in the western street line setback. Mr. Forehand testified that the proposed addition would follow the western wall line of the existing residence

and would not extend as far as the western wall line of the existing one-story addition.

4. Mr. Forehand testified that the petitioners are required to meet a different setback standard than the neighboring homes because of the orientation of their house and because the property is a corner lot. Mr. Forehand testified that the lots that adjoin and confront the petitioners' property, Lots 13 [Block 1], Lot 13 [Block 6], and Lot 1 [Block 5], do not front on Lexington Street and would not be adversely impacted by the new construction.

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance for the two-story addition must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 petitioners' lot has no exceptional topographical or other existing conditions peculiar to the property that are not shared with the neighboring properties. The Board finds that the petitioners' lot is consistent in shape and size with the other lots in the immediate area. See, Exhibit No. 15 (zoning vicinity map).

The Board notes that the all corner lots in the County are subject to the same standards and that the location of the existing structures on the petitioners' lot does not create a zoning reason for the grant of a variance. Additionally, the Board finds that new construction could be built on the property without the necessity of a variance.

Accordingly, the requested variance of 3.91 feet from the required fifteen (15) foot street line setback (Lexington Street) for the construction of a two-story addition is **denied**.

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance for the existing single-family dwelling 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 residence has existed on the petitioners' property for over 50 years and is located in the western street line setback. The Board finds that this is an exceptional circumstance and that the strict application of the regulations would 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 variance requested for the existing single-family dwelling 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 existing single-family dwelling continues 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 view of the existing single-family dwelling from the neighboring properties will not change and that the variance for the existing dwelling will not be detrimental the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of eleven (11) feet from the required fifteen (15) foot street line setback (Lexington Street) 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 their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

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 and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution.

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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 11th day of February, 2004.

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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.