

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6016

PETITION OF H. COLLEEN WEI
(Hearing held September 15, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, October 22, 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 a variance from Section 59-C-1.323(a). The petitioners propose to construct a second-story addition that requires a variance of eighteen (18) feet as it is within twelve (12) feet of the front lot line. The required setback is thirty (30) feet.

Colleen Wei and Bruce Williams, the petitioners, and Thomas Lowe, of Design Studio, appeared at the public hearing.

The subject property is Lot 84, Block 3, Regency Estates Subdivision, located at 11820 Kim Place, Potomac, Maryland, 20854, in the R-90 Zone (Tax Account No. 00100782).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a second-story addition over an existing one-story structure.
2. Mr. Lowe testified that the property is sited at an angle on the lot and that the lot is on a cul-de-sac. Mr. Lowe testified that the property is a pie-shaped lot and that the dimensions of the lot narrow from north to south. See, Exhibit No. 9 [zoning vicinity map]. Mr. Lowe testified that Kim Place wraps around two sides of the property from east to west, and then narrows to a point at its southern boundary. Mr. Lowe testified that most properties in the neighborhood are rectangular-shaped lots and that the petitioners' lot is not typical for the neighborhood.
3. The petitioner testified that the property is located at the top of a hill and that front yard slopes upward, while the rear yard has a downward slope. A retaining is also located in the rear yard. The petitioner testified that the new construction would match the design of the existing house and that two-story structures are common in the neighborhood.

FINDINGS OF THE BOARD

Based on the petitioners' 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 petitioners' property is a pie-shaped lot in a neighborhood of rectangular-shaped lots. Kim Place wraps around the front of the lot from east to west. The Board finds that these are exceptional circumstances peculiar to the property 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 construction of a second-story addition 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 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 two-story structures are common in the neighborhood and that the new construction will not significantly impact the view from the neighboring properties. Additionally, the Board finds that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of eighteen (18) feet from the required thirty (30) foot front lot line setback 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 their witnesses, 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(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 Donald H. Spence, Jr., Chairman, seconded by Angelo M. Caputo, with Louise L. Mayer, in agreement, and with Donna L. Barron and Allison Ishihara Fultz, in opposition, n agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 22nd day of October , 2004.

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.