

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6116

PETITION OF JEFFREY AND ROCHELLE KUPFER

(Hearings held February 1 and March 22, 2006)

OPINION OF THE BOARD

(Effective date of Opinion, April 27, 2006)

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(b)(2). The petitioners propose the construction of: (1) a one-story addition that requires a 19.33 foot variance as it is within 0.67 feet of the rear lot line; (2) a one-story addition that requires a 19.17 foot variance as it is within 0.83 feet of the rear lot line; and (3) a second-story addition that requires a 18.50 foot variance as it is within 1.50 feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

Michael Stehlik and Jonas Carnemark, architects, appeared with the petitioners at the public hearing.

The subject property is Lot 24, Block 5, Chevy Chase Section 4 Subdivision, located at 7011 Meadow Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00464172).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of two one-story additions and a second-story addition in the eastern section of the property.
2. The petitioner testified that his property is a narrow, shallow, pie-shaped lot and that its configuration is different than any of the neighboring lots. The petitioner testified that the property backs up to Parcel 1, which is the property of the 4-H Club. The petitioner testified that there are easements between the two properties and that the neighboring property, Parcel 1/4-H Club, has an easement on their property for drainage. Mr. Carnemark testified that in exchange for the easement on the subject property, the petitioners' are permitted the location of none permanent structures on the neighboring property,

such as sheds, playground equipment and playhouses. See Exhibit 4(c) [site plan].

3. Mr. Carnemark testified that the petitioners' lot was recorded on August 19, 1909, and that the house was built in 1923. Mr. Carnemark testified that the subject property is a triangular shaped lot with a maximum depth of 39 feet that narrows to zero. Mr. Carnemark testified that the existing house is a non-conforming structure and that the subject property's buildable area is the smallest in the neighborhood. Mr. Carnemark testified that the existing dwelling is 1,599 square feet and that the proposed construction would add 201 square feet to the house, resulting in a dwelling that would be 1,800 square feet. See Exhibit 11 [diagram of existing vs. proposed site plan].
4. Mr. Carnemark testified that the subject property's buildable envelope is the same triangular shape as the lot and that the buildable area is 1,500 square feet. Mr. Carnemark testified that because of the shape of the lot, structures are restricted to an area half the width of the lot. Mr. Carnemark testified that the shape of the petitioners' property is shared with one other lot in the neighborhood, Lot 10, but that the lot has a significantly larger buildable area. See, Exhibit 12 [enlargement of the zoning vicinity map].

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 Board finds that the petitioners' property is an elongated, shallow, triangularly shaped lot and that no other lot in the neighborhood shares this characteristic. The Board finds that the shape of the lot restricts the property's buildable area to 1,500 square feet and that the application of the required setbacks to the property disproportionately impacts the lot's buildable envelope. The Board finds that these are exceptional circumstances 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 variances requested for the construction of two one-story additions and of a second-story addition are 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 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 construction will not materially change the view from the surrounding properties and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 19.33 feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition; of 19.17 feet from required twenty (20) foot rear lot line setback for the construction of a one-story addition; and of 18.50 feet from the required twenty (20) foot rear lot line setback for the construction of a second-story addition 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 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(e).

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.

Board member Wendell M. Holloway was necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Donna L. Barron, in agreement, and with Allison Ishihara Fultz, Chair, in opposition, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 27th day of April, 2006.

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.