

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5733

PETITION OF MANUEL VALENCIA

(Hearing held March 20, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, April 26, 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 a variance from Section 59-C-1.323(a). The petitioner proposes to construct a one-story addition that requires a fifteen (15) foot variance as it is within ten (10) feet of the front lot line. The required setback is twenty-five (25) feet.

Julio C. Gonzalez, contractor, and Rafael Pinto, architect, appear with the petitioner at the public hearing.

The subject property is Lot 22, Block 9, located at 6206 Massachusetts Avenue, Bethesda, Maryland, in the R-90 Zone (Tax Account No. 00506780).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 19 x 15 foot one-story addition.
2. The petitioner testified that his property is a thru lot with two fronts. The front of property faces Massachusetts Avenue and the rear of the property faces Wiscasset Road. See, Exhibit No. 4. The petitioner testified that although the variance is requested for a front lot line, the proposed addition would be located in the property's rear yard.
3. The petitioner testified that his property is a small, shallow lot. The petitioner testified that while the property is located in the R-90 Zone, the lot is smaller than the typical R-60 lot. The dimensions of the petitioner's lot are 5,900 square feet.
4. The petitioner testified that the property has large Leland Cypress trees located at the rear yard boundary that would screen the proposed addition. See, Exhibit Nos. 5(b) and 10(d). The petitioner testified that he has spoken with his neighbors and that his neighbors have expressed no concerns about the proposed construction.

FINDINGS OF THE BOARD

Based on the petitioner's 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 petitioner property's is a small, shallow lot that fronts on two streets, Massachusetts Avenue and Wiscasset Road. The Board finds that the exceptional size and shallowness of the property are conditions that are peculiar to the property and that the strict application of the regulations would result in practical difficulties for and an undue hardship upon the property owner were the variance to be denied.

- (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 one-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 proposed construction would 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 record contains no correspondence or testimony in opposition to the variance request. The Board finds that the proposed construction would be screened by the existing mature trees and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of fifteen (15) feet from the required twenty-five (25) foot front lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his 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 and 7.

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 Angelo M. Caputo, seconded by Louise L. Mayer, with Allison Ishihara Fultz and Donna L. Barron, in agreement, the Board adopted the following Resolution. Donald H. Spence, Jr., Chairman, was necessarily absent and did not participate in this Resolution.



Donna L. Barron
Vice 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 26th day of April, 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.