

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6434

PETITION OF ALEXANDER AND CATHERINE OKULIAR

OPINION OF THE BOARD
(Opinion Adopted June 11, 2014)
(Effective Date of Opinion: June 23, 2014)

Case No. A-6434 is an application for a five-foot variance from the 20-foot rear lot line setback required by Section 59-G-1.323(b(2) of the Zoning Ordinance. The Petitioners propose to construct a room addition.

The Board of Appeals held a hearing on the application on Wednesday, June 11, 2014. Matthew Dirksen of Case Design/Remodeling, Inc. appeared and testified.

EVIDENCE PRESENTED

1. The subject property is Lot 22, Block 21, 0011 Subdivision, located at 6808 Hillcrest Place, Chevy Chase, Maryland, 20815, in the R-60 Zone.
2. The subject property is substandard in size for the zone, and is significantly smaller than the lots around it, comprising just 5,255 square feet. [Exhibit No. 8].
3. Mr. Dirksen testified that the lot is also shallow, and sloped, and that the house sits just 1.9 feet inside the rear (west) setback. The site plan indicates that the house is built to the setback lines on the front (east) and left (north) sides, and that the right (south) side of the house is really the only side of the house on which there is space remaining within the buildable envelope. [Exhibit No. 4]. Mr. Dirksen testified that the Petitioners had considered expanding this home to the south, but that there is a large canopy tree located in the side yard on that side. He stated that the Town of Chevy Chase tree protection ordinance prohibits construction within 10 feet of the root zones of canopy trees, and that this would prevent construction on that side of the house.

4. According to Mr. Dirksen's testimony and Exhibit No. 3, the Petitioners' kitchen is extremely small, with a working floor area of just 61.6 square feet and room for only a 30 inch refrigerator. The proposed addition would add 68 square feet of interior space and would accommodate safe clearance on both sides of a 30-inch gas range and a 36-inch refrigerator, and maintain access to the back yard.

5. The subject property abuts only the rear yards of its neighboring properties. [Exhibit No. 3].

CONCLUSIONS OF LAW

Under Section 59-G-3.1 of the Zoning Ordinance, the Board of Appeals may grant petitions for variances as authorized in Section 59-A-4.11(b) upon proof by a preponderance of the evidence that:

- (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;

Based upon the testimony and evidence of record, the Board finds that the subject property is not only substandard for the zone, but is significantly shallower and smaller than the other lots in the neighborhood. The Board finds that in addition to being constrained by the small size and configuration of this lot, the building envelope on the lot is further restricted by the presence of the large canopy tree on the south side of the house, which prevents building on that side. The Board finds that these factors combine to uniquely constrain building on the subject property, and that the strict application of the rear lot line setback poses a practical difficulty for the Petitioners because it prevents them from constructing this very modest addition to their home, necessary to allow for a safe and workable kitchen.

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

The Board finds that adding 68 square feet of interior space is a minimal increase, and that a five-foot variance from the required 20 feet is the minimum reasonably necessary to accommodate this modest change.

- (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; and

The Board finds that a modest kitchen expansion continues the residential use of the property and in no way impairs the intent, purpose or integrity of the Master Plans.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties. These provisions, however, shall not permit the board to grant any variance to any setback or yard requirements for property zoned for commercial or industrial purposes when such property abuts or immediately adjoins any property zoned for residential purposes unless such residential property is proposed for commercial or industrial use on an adopted master plan. These provisions shall not be construed to permit the board, under the guise of a variance to authorize a use of land not otherwise permitted.

The evidence of record indicates that the proposed addition will face only the rear yards of properties that adjoin the subject property, and that all of these lots are significantly larger than the subject property. Thus the proposed addition will not have a significant visual impact on and will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

Therefore based upon the foregoing, the Board grants the requested variance of five feet from the required 20-foot rear lot line setback based upon the following conditions:

1. The Petitioners are bound by the testimony of their Witness and their exhibits of record, to the extent that such testimony and evidence are identified in this Opinion;
2. Construction must be completed according to the plans entered in the record as Exhibit Nos.4 and 5(a-f) subject to revisions in the Site Plan required by Condition No. 3 below;
3. Petitioners shall submit a revised site plan that depicts the location of the canopy tree on the south side of the house, as well as copies of their correspondence with the Town of Chevy Chase regarding the applicability of the Town tree ordinance to that tree.

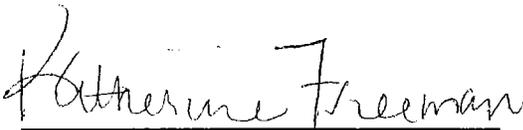
On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd, John H. Pentecost, and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of June, 2014.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date 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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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.