

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5649

PETITION OF DONALD PARK
(Hearing held October 10, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, November 8, 2001)

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 screened porch that requires a 4.40 foot variance as it is within 20.60 feet of the front lot line. The required setback is twenty-five (25) feet.

The subject property is Lot 13, Block L, McKenney Hills Subdivision, located at 9827 McMillan Avenue, Wheaton, Maryland, in the R-60 Zone (Tax Account No. 1301125834).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 12 x 18 foot screened porch. The property is a corner lot located at the intersection of McMillan Avenue and Hildarose Drive.
2. Curt Schreffler, the petitioner's architect, testified that Lots 11 through 13 were record in the 1950s, but were not developed at that time. Mr. Schreffler testified that the petitioner's property is an irregularly shaped lot and that the lot is 10 percent smaller than the four neighboring properties.
3. Mr. Schreffler testified that Macmillan Avenue was extended approximately 200 feet in order to provide access to Lots 11, 12 and 13. Mr. Schreffler testified that the three lots share a common driveway off of McMillan Avenue and that the fronts of the residences are oriented to face the common driveway. See, Exhibit No. 10.
4. Mr. Schreffler testified that the Department of Permitting Services (DPS) designated the petitioner's rear yard as the property's front yard and that the lot is further impacted a public utility easement at its southern boundary.
5. Mr. Schreffler testified that the property's rear yard backs up to community pool and that the screened porch would have no impact on the neighboring properties.

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 property is an irregular shaped, corner lot with the residence oriented to face a shared common driveway located in the southern rear yard of the property. The common driveway is shared with Lots 11 and 12.

The Board finds that the exceptional shape of the lot, the unusual orientation of the residence, and the DPS designation of the property's rear yard as a front yard are conditions that are unique and peculiar to the property and that the strict application of the regulations would result in practical difficulties for and an undue burden 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 screened porch is the minimum reasonably necessary to overcome the property's exceptional circumstances.

- (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 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 record contains no testimony or correspondence in opposition to the variance request. The Board finds that the screened porch will back up to a community pool and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 4.40 feet from the required twenty-five (25) foot front lot line setback for the construction of a screened porch is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and 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 5.

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.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Louise L. Mayer and Donna L. Barron, Vice Chairman, in agreement, the Board adopted the foregoing Resolution. Board Chairman Donald H. Spence, Jr., 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 8th day of November, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-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.