

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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

**Case No. A-5657**

**PETITION OF STEPHEN J. AND LENA M. MARCELLINO**

(Hearing held October 17, 2001)

**OPINION OF THE BOARD**

(Effective date of Opinion, November 15, 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(b)(2). The petitioners propose to construct two-story addition that requires a four (4) foot variance as it is within sixteen (16) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 39, Block 1-B, Glen Cove Subdivision, located at 5110 Newport Avenue, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00657627).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a two-story addition at the rear of the residence.
2. The petitioners testified that the property is a uniquely shaped lot with an angled rear lot line and that the property is narrower than most of the neighboring lots. The petitioners testified that the variance is required for only the northeast corner of the property.
3. The petitioners testified that the property most impacted by the proposed construction does not have windows that would face the addition and that the addition would be screened by two large, existing trees. The petitioners testified that the property is bordered by a 6-foot privacy fence at its side and rear yards.
4. The petitioners testified that the construction materials and the architectural design would be in harmony with the existing residence and that the addition would face a similar two-story addition located on Lot 37. The petitioners testified that they have spoken with the neighbors and that the neighbors support the variance request.

**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 property is a narrow, uniquely shaped lot with an angled rear lot line and the variance is required for only the northeast corner of the proposed addition. The Board finds that the narrowness and the exceptional shape of the lot are conditions that are unique and peculiar to the property and would result in practical difficulties and an undue hardship upon the property owners if the variance were not granted.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variance for the construction of the two-story addition as proposed is de minimus.

*(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 testimony or correspondence in opposition to the requested variance. The addition would face a similar two-story structure and would be screened by existing trees and the 6-foot privacy fence. The Board finds that the addition will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of four (4) feet from the required twenty (20) foot rear lot line for the construction of a two-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, 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(a) through 5(f).

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

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Donald H. Spence, Jr.  
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 15th day of November, 2001

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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.