

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5677

PETITION OF DAVID WELNA AND KATHLEEN WHEATON

(Hearing held November 14, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, December 28, 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 variances from Sections 59-C-1.323(a) and 59-B-3.1. The petitioners propose to construct: (1) a one-story addition that requires a 5.03 foot variance as it is within 22.66 feet of the established front building line and a covered porch that requires a variance of 4.03 feet as it is within 23.66 feet of the established front building line. The established front building line for the one-story addition is 27.69 feet and the established front building line for the covered porch is 23.66 feet.

The subject property is Lot 22, Block 6, Bradley Village Subdivision, located at 7127 Fairfax Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00447554).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 3.4 x 10 foot one-story addition/foyer with a 2-foot covered porch.
2. The petitioner testified that the property is a trapezoidal shaped lot, at the peak of the curve on Fairfax Road. The petitioner testified that the property is located one house away from the intersection of Elm Street and Fairfax Road and that Elm Street is used by residents as a cut-thru street. The petitioner testified that Fairfax Road straightens at the intersection of Fairfax Road and Elm Street.
3. The petitioner testified that an established building line is required for the proposed construction and that over half of the homes on their street could not be used in the established building line calculation because most houses are sited closer to the road than their house.
4. The petitioner testified that the houses on their street are not aligned with each other and that the curve of the road minimizes the visual impact of the proposed construction on the neighboring homes on the same side of the street.

5. Paul Gaiser, the petitioners' architect, testified that the proposed structures would be built of brick and would be in harmony with the residence.

FINDINGS OF THE BOARD

Based on the petitioner's 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 property is an unusually shaped lot that is located at the peak of the curve of Fairfax Road. The proposed construction is subject to an established building line. The calculation of the established building line could use only half of the houses that immediately adjoin the petitioners' property because the houses are located closer than the subject property. The established building line is the average distance from the street of all of the houses within 300 feet in either direction of the subject property.

The Board finds that these are unusual circumstances that are peculiar to the petitioners' property and would result in practical difficulties for and an undue hardship upon the petitioners if the variances were denied.

- (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 a one-story addition and a covered porch are the minimum reasonably necessary to overcome the 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 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 record contains no testimony or correspondence in opposition to the variance request. The Board finds that the curve of Fairfax Road will minimize the visual impact for the adjoining neighbors and that the proposed construction will be in harmony with the residence. The Board further finds that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 5.03 feet from the required 27.69 foot established front building line for the construction of a one-story addition and of 4.03 feet from the required 23.66 foot established front building line for the construction of a covered porch are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her 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(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 is adopted as the Resolution required by law as its decision on the above entitled petition.

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

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 28th day of December, 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.