

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5683

PETITION OF JAMES FARR

(Hearing held November 28, 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(b)(2) and 59-C-1.323(b)(1). The existing fence requires variances of two (2) feet as it is within three (3) feet of the rear lot line and of five (5) feet as it is within zero (0) feet of the side lot line. The required rear lot line setback is five (5) feet and the required side lot line setback is five (5) feet.

Jim Sines, of Garden Gate Landscaping, represented the petitioner at the public hearing.

The subject property is Lot 5, Block 9, Kenwood Subdivision, located at 6609 Kennedy Drive, Chevy Chase, Maryland, in the R-90 Zone (Tax Account No. 00518082).

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

EVIDENCE PRESENTED TO THE BOARD

1. Mr. Sines testified that the existing fence replaces a prior fence that was located at the northern and eastern boundaries of the property. Mr. Sines also testified that the prior fence was 20 years old, decayed and in need of repair.
2. Mr. Sines testified that the property's topography at the northern section of the lot drops approximately 4 to 5 feet. Mr. Sines further testified that the replacement, vertical-board fence has been stepped-down to accommodate the topography, and that in some instances, the fence exceeds the 6½ foot height requirement before the fence could be stepped-down. See, Exhibit Nos. 6(a) and 6(b).
3. Gary Bronstein and Janice Ackerman, adjoining neighbors on Lot 4, appeared in opposition to the variance request. Mr. Bronstein testified that workers damaged their fence while installing the petitioners' fence and that their fence was never repaired.
4. Mr. Bronstein testified that their fence adjoins the petitioners' fence and that the fences were similar in style and height. Mr. Bronstein testified that the replacement fence is much higher as shown on Exhibit Nos. 15(a) through 15(d).

5. Mr. Bronstein testified that there is a modest slope between the two properties and that the slope is a characteristic of both properties. Mr. Bronstein testified that the fence is detrimental to the use and enjoyment of his property.

FINDINGS OF THE BOARD

Based upon the binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) and (d) 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 Board finds that the petitioner's lot does not possess any of the required exceptional characteristics has no peculiar topographical conditions that are not shared with adjoining properties.

The Board notes that the fence replaces a prior fence that had existed on the property for approximately 20 years, and that the Board has granted variances for structures that are replaced with similar structures that require a variance. The Board finds that the replacement fence is higher than the original fence and cannot, therefore be considered a replacement structure.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the fence materially impacts the view for the adjoining property owners and will be detrimental to the use and enjoyment of their property.

Since the petition does not meet the requirements of Section 59-G-1.3(a), the Board finds that it does not need to consider the other requirements for granting a variance. Accordingly, the requested variances of two (2) feet from the required five (5) foot rear lot line setback and of five (5) feet from the required side lot line setback for the existing fence are denied.

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 Allison Ishihara Fultz, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing

Resolution. Board member Angelo M. Caputo was necessarily absent and did not participate in this 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:

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.