

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5707

PETITION OF SUSAN KEATING

(Hearing held February 13, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, March 15, 2002)

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 Section 59-C-1.323(a). The petitioner proposes to construct two one-story additions that require variances of 2.81 feet as the first proposed addition is within 4.29 feet of the side lot line, and of seven (7) feet as the second proposed addition is within eight (8) feet of the second side lot line. The required side yard setback is seven (7) feet for the first addition and the second side lot line setback is fifteen (15) feet for the second addition.

Judy Gabrielli, the petitioner's architect, appeared with the petitioner at the public hearing. Jim Humphrey, a resident at 5104 Elm Street, appeared in opposition to the variance request.

The subject property is Lot 10, Block 7, Bradley Village Subdivision, located at 7000 Exfair Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00447122).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct two one-story additions in the western and eastern sections of the property. The property is a corner lot located at the intersection of Exfair and Clarendon Roads.
2. The petitioner testified that the proposed construction would replace an existing structure in the eastern side yard and would provide living space for an elderly relative. The petitioner testified that she has spoken with the neighbor most impacted by the new construction and that the neighbor supports the variance request. The petitioner stated that the additions would enhance the view of the property.
3. Ms. Gabrielli testified that the property is an oddly shaped lot that narrows from front to back. Ms. Gabrielli testified that the typical lot on Exfair Road is 56 feet in width, with side lot lines that are not parallel.
4. Ms. Gabrielli testified that the petitioner does not want to add an addition to the rear of the house because an addition in this area would ruin the functionality of the

kitchen and dining rooms. Ms. Gabrielli testified that the petitioner wants to preserve the existing deck and tree located in the rear yard.

5. Mr. Humphrey testified that the streets in the neighborhood are laid out in a curved fashion and that the width of the lots in the neighborhood narrow at the street front, then widen at the rear of the lots. Mr. Humphrey testified that the petitioner's lot is not unique and that the shape and size of the property is typical for the neighborhood.
6. Mr. Humphrey testified that the proposed construction would protrude into the existing green space between the neighborhood on Clarendon Road and the Central Business District (CBD). Mr. Humphrey testified that the green space is very valuable to the neighborhood because it provides a transition buffer between the neighborhood and the CBD.
7. Mr. Humphrey testified that the proposed addition in the western side yard would extend up to the property line and that the addition would impact the view from the adjoining neighbors' property.
8. In response to Mr. Humphrey's concerns, Ms. Gabrielli testified that the proposed construction would be screened by the existing buffer of trees and vegetation located at the front of the property and would not materially impact the view from the right-to-way. Ms. Gabrielli stated that the proposed addition for the western side yard could be redesigned in a manner that would not extend to the property lines.

FINDINGS OF THE BOARD

Based upon the petitioner's 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 Sections 59-G-3.1(a) and (b) 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 although the properties in the petitioner's neighborhood differ slightly in size and shape, that the dimensions of the petitioner's lot, as shown on the Zoning Vicinity Map (Exhibit No. 7), does not differ substantially from the other lots in the neighborhood, and the shape of the petitioner's lot is not exceptional. The Board further finds that the petitioner's lot has no peculiar topographical or other conditions that are not shared by the neighboring properties.

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

The Board finds that the requested variances for the construction of two one-story additions are not the minimum reasonably necessary. The Board notes

that the property's existing conditions do not prevent construction in other areas of the property, which would not require a variance.

The petition does not meet the requirements set forth in Section 59-G-1.3(a) and (b) of the Montgomery County Zoning Ordinance. Therefore, the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of 2.81 feet from the required seven (7) foot side yard setback and of seven (7) feet from the required fifteen (15) foot side yard setback for the construction of two one-story additions 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 Donna L. Barron, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution. Board member Louise L. Mayer 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 15th day of March, 2002.

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.