

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5900**

**PETITION OF PATRICK AND DEBORAH LOGSDON**

(Hearing held on July 23, 2003)

**OPINIION OF THE BOARD**

(Effective Date of Opinion, October 3, 2003)

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 petitioners propose to construct a second-story addition that requires a six (6) foot variance as it is within nineteen (19) feet of the front lot line. The required setback is twenty-five (25) feet.

The petitioners were represented by Kinley R. Dumas, Esquire, and Paul Andresino, an architect, at the public hearing.

The subject property is Lot 87, Block 19, American University Park Subdivision, located at 4852 Park Avenue, Bethesda, Maryland, 20816, in the R-60 Zone. (Tax Account No. 0703377548).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a second-story addition.
2. Ms. Dumas stated that the proposed addition would be built above a first-floor six-foot covered porch that does not require a variance, but that the second-story addition would require a variance. Ms. Dumas stated that an existing storm drain in the rear yard significantly reduces the buildable area on the property and that the proposed construction would not extend beyond the adjoining dwelling located at the petitioners' western boundary.
3. Mr. Andresino testified that most homes in the neighborhood are located in the front yard setbacks and that the proposed addition would be in harmony with the neighboring and adjoining homes.

4. Mr. Logsdon testified that he has spoken with his neighbors and that his neighbors support the variance request. A letter of support was entered into the record as Exhibit No. 11.

### **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 of the Zoning Ordinance 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 applications of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The proposed addition would be built above a six-foot covered porch. The covered porch does not require a variance, but the second-story addition above the porch does require a variance. The Board finds that the request to build above the existing footprint is an exceptional circumstance peculiar to the property and that the strict application of the regulations would result in practical difficulties to the property owners if the variance were 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 second-story addition is the minimum reasonably necessary.

- (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 Board finds that the variance will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or any duly adopted and approved area master plan.

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

The Board finds that the proposed addition would not extend beyond an adjoining residence at the petitioners' western boundary and that the variance will continue the residential use of this property. The Board further finds that the variance will not be

detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of six (6) feet from the required twenty-five (25) foot front lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses and the presentations of their attorney, 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 the plans entered in the record as Exhibit Nos. 4(a)-(b) and 5(a) through 5(d).

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

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

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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 3rd day of October, 2003.

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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 (12) month period within which the variance granted by the Board must be exercised.

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 Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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 of after the date the Opinion is mailed and entered into the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's rules of Procedure for specific instructions requesting reconsideration.