

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5930

PETITION OF LENFORD C. CAREY
(Hearing held November 5, 2003)

OPINION OF THE BOARD
(Effective Date of Opinion, December 19, 2003)

The proceeding is petition pursuant to Section 59-A-4.11(b) of the Montgomery County Zoning Ordinance (Chapter 59, Montgomery County Code, 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes to construct a one-story addition that requires a variance of 3.50 feet as it is within 16.50 feet of the rear lot line. The required setback is twenty (20) feet.

Gerald Briggs, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 5, Block M, Garrett Park Estates Subdivision, located at 5106 Flanders Avenue, Kensington, Maryland, 20895, in the R-60 Zone. (Tax Account No. 00061816).

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

EVIDENCE PRESENTED TO THE BOARD

1. The Property is a quadrilateral-shaped lot consisting of about 8,300 square feet. The Property is located at the intersection of Flanders Avenue and Jolly Way. The Property has about 100 feet of frontage on Flanders Avenue and 100 feet of frontage on Jolly Way. The west side lot line is about 83 feet long and the south rear lot line is about 83 feet long, resulting in a southwest corner that opens at an obtuse angle.
2. The Property is improved with a one-story, 1,007 square foot dwelling. The house is oriented so that it parallels the front lot line adjoining Flanders Avenue and the western side lot line. The southwest corner of the house is about 25 feet from the rear Property line. A paved driveway gives access to the site from the west side of the Flanders Avenue frontage.

3. The zoning vicinity map (Exhibit No. 8) indicates that the Property is larger than most of the other lots in the same block, as well as those within the area. The shape of the Property is similar to other corner lots in the neighborhood, including Lot 8 in Block M, Lot 15 in Block O, and Lots 3 and 13 in Block N. Several of the corner lots in the area have acute angles at their internal corners, including Lots 1 and 11 of Block N and Lots 5 and 13 of Block O.
4. The Petitioner proposes to build a one-story, 405 square foot addition onto the rear of the house, which will wrap around the west side of the house. The purpose of the addition is to expand the existing kitchen and add a dining room. The addition will encroach into the rear setback by 3 feet, 6 inches. The Petitioner testified that the angle of the rear lot line in conjunction with the orientation of the house causes a practical difficulty in locating the proposed addition without encroaching into the rear setback.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements of 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 Petitioner has failed to show any extraordinary conditions that are peculiar to the Property. The Petitioner contends that the shape of the Property, and in particular the obtuse angle of the southwest corner of the Property, combined with the orientation of the house, is a peculiarity that causes a practical difficulty in locating the proposed kitchen addition. The Board finds, however, that this lot shape is not a peculiar one, but is actually common in the neighborhood (see Exhibit No. 8). Indeed, the obtuse angle of the southwest corner of the lot provides more space to build, not less, than several other corner lots in the community. Further, the Property is as large or larger than most lots in the area. With regard to the orientation of the house, the Maryland courts have said that the siting of a structure on a lot does not create a zoning reason for the grant of variance. Any practical difficulty must be the result of a unique condition relating to the land. See Umerly v. People's Counsel, 108 Md. App. 497, 506 (1996), *citing* North v. St. Mary's County, 99 Md. App. 502, 514 (1994).

The petition does not meet the requirements of Section 59-G-1.3(a); the Board need not consider the other requirements of that section for the grant of a variance.

Accordingly, the requested variance of 3.50 feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition is denied.

The Board adopted the following 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

Board Member Louise L. Mayer was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Angelo M. Caputo 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 Board of Appeals for Montgomery County, Maryland this 19th day of December, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date 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 on accordance with the Maryland Rules of Procedure.