

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5914

PETITION OF SEAN AND DEBORAH A. DWYER
(Hearings held September 17 and November 26, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, January 16, 2004)

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(b)(2). The petitioners seek a variance of three (3) feet for the existing single-family dwelling as it is within seventeen (17) feet of the rear lot line and an amended variance of five (5) feet for the proposed construction of a one-story addition as it is within fifteen (15) feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

A public hearing was held on September 17, 2003, at which the petitioners requested to continue the public hearing and to amend the variance request. The public hearing was continued on November 26, 2003.

Thomas Keating, a contractor, appeared with the petitioners at the public hearings. Joseph and Lisa Vetter, property owners at 5616 Northfield Road, also appeared at the public hearing on September 17, 2003.

The subject property is Lot 10 and Part of Lot 9, Block S, Greenwich Forest Subdivision, located at 8205 Garfield Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No. 00497013).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners requested variances for the existing single-family dwelling and a one-story addition. The petitioners' original petition requested a variance of thirteen (13) feet for the construction of a 12.5 x 15.5 foot one-story addition. The petitioners' amended petition requests a variance of five (5) feet for the proposed construction of an 8.6 x 18.6 foot one-story addition.
2. Mr. Keating testified that the prior owners built an addition at the northeast corner of the house and that the house is currently located in the rear yard setback. Mr. Keating testified that the property is a small, shallow lot and that it is the smallest lot in the neighborhood. Mr. Keating testified that the lot is

substandard for the zone and that the lot is surrounded by properties that are 9,000 square feet in size.

3. Mr. Vetter testified that he had originally written a letter in opposition to the variance request, but that he has talked with the petitioners and that his concerns about the variances have been resolved. Mr. Vetter testified that the petitioners have agreed to install landscaping and shrubbery to provide privacy and to screen the proposed addition.

FINDINGS OF THE BOARD

Based on the petitioners' 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 prior owners of the petitioners' house built an addition at the northeast section of the house. The house is currently located in the rear yard setback. The petitioners' property is a small, shallow lot that is substandard for the zone. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners.

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

The Board finds that the variances requested for the existing single-family dwelling and the one-story addition are 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 proposed construction will continue the residential use of the property and that 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 petitioners propose to install additional landscaping and shrubbery to screen the view of the proposed structure from the neighboring

properties and the Board finds that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of three (3) feet from the required twenty (20) foot rear lot line setback for the existing single-family dwelling and the variance of five (5) feet from the required twenty (20) foot rear lot line setback for the proposed construction of a one-story addition are 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, 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. 16(a) through 16(g).

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.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, 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 16th day of January, 2004.

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.

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.