

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5952

PETITION OF JODI ARLEN
(Hearing held January 7, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, March 1, 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(a). The petitioner seeks a variance of twenty (23) feet for the existing single-family dwelling as it is within twenty (20) feet of the established front building line and a variance of eighteen (18) feet for the proposed construction of two-story addition as it is within twenty (25) feet of the established front building line. The required established building line is forty-three (43) feet.

Philip and Jodi Arlen, the petitioners, appeared with David Kacar, an architect, at the public hearing.

The subject property is Lot 7 , Block 18, Huntington Terrace Subdivision, located at 5615 Roosevelt Street, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No. 00513581).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners seek variances for the existing single-family dwelling and for the proposed construction of an 18 x 25.2 foot two-story addition.
2. Mr. Kacar testified that the existing residence was built in 1916 and that the subject property is located at the intersection of Roosevelt and Garfield Streets. Mr. Kacar testified that the most of the lots in the petitioners' neighborhood are narrow and that the petitioners' lot is narrower than most because it is a corner property. Mr. Kacar testified that the width of the petitioners' lot is 64 feet, while the width of the neighboring lots are 75 feet.
3. Mr. Kacar testified that the existing dwelling is currently located in the established building line on the Garfield Street side and that the property is required to meet a greater setback than typically required for the R-60 Zone. Mr. Kacar testified that the established building line adversely impacts the petitioners' lot because to comply with the established building line and meet a 7-foot side yard setback, only a 15-foot allowable building area would be permitted.
4. Mr. Kacar testified that Garfield Street angles eastward, and then straightens as it moves beyond the petitioners' lot towards Lots 21 and 22 and that because of the

angled road, the houses on Lots 21 and 22 are sited a greater distance from the road than the petitioners' house. See, Exhibit No. 9 [zoning vicinity map].

5. Mr. Kacar testified that the petitioners' property fronts on Roosevelt Street and that the lots used in the calculation of the established building line, Lots 21 and 22, front on Garfield Street. Mr. Kacar testified that the proposed construction will not be located any closer to the road than the existing residence. See, Exhibit No. 4(a) [survey plat]

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 existing single-family dwelling has existed for over eighty years and it is currently located within the setback required by the established building line. The proposed two-story addition is within the existing footprint and would not be sited any closer to the road than the existing residence. The Board finds that these are extraordinary conditions that are peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners. Also it is the property most significantly affected by the established building line.

- (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 residence and the proposed construction of a two-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 variances requested will continue the residential use of the property and 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 Board finds that requested variances will not materially change the view from the neighboring lots of the petitioners' property and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of twenty-three (23) feet from the required forty-three (43) foot established front building for the existing single-family dwelling and the variance of eighteen (18) feet from the required forty-three (43) foot established front building line for the proposed construction of a two-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. 4(a) and 4(b) and 5(a) through 5(e).

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 Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, 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 County Board of Appeals this 1st day of March, 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.

