BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-5953

PETITION OF FRANCES ROTWEIN
(Hearings held January 21 and March 24, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, April 20, 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 Sections 59-C-1.323(a) and 59-C-1.323(b)(1). The petitioner proposes to construct a one-story addition (garage) that requires variances of seven (7) feet as it is within eighteen (18) feet of the front lot line and of three (3) feet as it reduces the sum of both side yards to fifteen (15) feet. The required front lot line setback is twenty-five (25) feet and the required sum of both side yards is eighteen (18) feet.

Dean K. Brenneman and Michael Ullrich, architects, appeared with the petitioner at the public hearings. Michael Rotwein, Esquire, the petitioner's son, appeared with and represented the petitioner at the public hearing on March 24, 2004. The record of the public hearing of January 21, 2004 was left open to permit time for the petitioner to obtain a complete site plan.

The subject property is Lot 6, Block C, located at 6605 Tulip Hill Terrace, Bethesda, Maryland, 20816, in the R-90 Zone (Tax Account No. 00660647).

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

EVIDENCE PRESENTED TO THE BOARD

Hearing on January 21, 2004

1. The petitioner proposes a one-story addition (two-car garage) in the eastern side yard.

2. Mr. Brenneman testified that the petitioner has lived in the residence for 47 years. Mr. Brenneman testified that the petitioner's property is a deep, narrow lot, and that while the neighboring lots are similar, the petitioner's lot is the most extreme of the lots. Mr. Brenneman testified that the petitioner's lot is 87 feet in width and its lot size is 31,091 square feet.

3. Mr. Brenneman testified that the curvature of the road at the front of the property and the narrowness of the lot limit the placement of a garage and access to the front of the property.
4. Mr. Brenneman testified that the existing carport can not be replaced with a one-story garage addition because it would eliminate the property's front door. Mr. Brenneman testified that the proposed construction would replace the existing double carport with a two-car garage and that having only one covered parking space would reduce the value of the property.

5. Mr. Brenneman testified that the design of the proposed addition will follow the natural grade of the property and would not obstruct the existing windows in the area proposed for the addition. Mr. Brenneman testified that the petitioner's property was the only property in the block with a carport and that the other properties all have garages.

6. Mr. Brenneman testified that the property backs up to an undeveloped alley and that the grade of the property drops about three feet below the grade of the adjoining property that would be most impacted by the new construction. Mr. Brenneman testified that the addition would be screened by a stand of evergreen trees and that a portion of the circular driveway would be removed and replaced with additional landscaping and vegetation.

7. Mr. Ullrich testified that the property was re-zoned from R-60 to R-90 in the 1970s.

Hearing on March 24, 2004

1. Mr. Brenneman testified that copies of a survey of the property were entered into the record. See, Exhibit Nos. 15(b) and 15(c) [surveys]. Mr. Brenneman testified that the proposed construction is not required to meet an established building line because the adjoining lots that would be used in the calculation of the established building line are non-conforming lots.

2. Mr. Brenneman testified that the average lot width for the petitioner's neighborhood is 108 feet, while the petitioner's lot is 83 feet in width. Mr. Brenneman testified that the narrowness of the petitioner's lot does not permit construction in the side yards of the property and that the topography of the lot slopes upward from front to rear. Mr. Brenneman testified that a one-car garage would be out of character with the existing conditions of the neighborhood. Mr. Brenneman also testified that if the proposed garage were to be placed closer to the house, grading for the driveway would cover the front windows of the house.

4. Mr. Rotwein testified that the proposed addition would provide a safe access to the property and that the denial of the variance request would deny the petitioner the reasonable use of her property. Mr. Rotwein testified that the pool, the tennis court, and the prior addition were built by his father and that the property received a variance for the enclosure of a patio in 1983.

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 Section 59-G-3.1(a) 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 contends that the requested variances are warranted because of the exceptional narrowness of the property. While the property does appear to be narrower than other lots in the neighborhood, the petitioner has failed to show how this condition results in a practical difficulty in complying with the front and side setback requirements. In order to prove that a "practical difficulty" exists, the petitioner must show that the setback restriction "would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome." Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322A.2d 220 (1974); Red Roof Inns, Inc. v. Peoples Counsel for Baltimore County, 96 Md. App. 219, 624 A.2d 1281 (1993). It is not enough for an applicant to demonstrate that his or her proposal, if allowed, would be suitable or desirable, would do no harm, or would be convenient for the applicant. See Kennerly v. Mayor of Baltimore, 247 Md. 601, 606-07, 233 A.2d 800 (1967).

In this case, the petitioner's site plan (Exhibit No. 4) indicates that there is sufficient room within the building envelope of the property to locate a reasonably sized garage in front of the house (e.g., where the carport is presently located). The petitioner would have difficulty meeting the front and side setbacks only because she proposed to detach the garage and separate it from the house. This is a matter of convenience, and does not rise to the level of a practical difficulty.

We recognize that an attached garage may require reconfiguration of the front doorway of the home and that this may involve extra cost to the petitioner. We may not, however, take the cost of the work into consideration. "Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances [of the land], none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program." Cromwell v. Ward, 102 Md. App. 691, 715, 651 A.2d 424 (1995), quoting Xanthos v. Board of Adjustment, 685 P.2d 1032, 1036-37 (Utah 1984).

We also note that the property, while narrow, consists of 31,091 square feet, leaving ample room in the rear of the lot for a garage. The petitioner has chosen instead to install in her rear yard a patio, a swimming pool, and a tennis court (Exhibit 15(b)). To the extent the petitioner claims these improvements prevent her from locating a garage on her property, any alleged hardship is self-created. Moreover, the Maryland courts have held that the siting of improvements on a lot does not create a zoning reason for the grant of variance. Any practical difficulty must be the result of a unique physical condition of 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).

For these reasons, we find that the petition does not meet the requirements of Section 59-G-3.1(a).

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

The Board finds that, because there is sufficient room within the building envelope of the property to locate a reasonably sized garage, either in front or to the rear of the house, the requested variances for the construction of a one-story addition are not the minimum reasonably necessary. For this reason, the petition does not meet the requirements of Section 59-G-3.1(b).

The petitioner also argues that a recent Maryland case changes the way in which this Board should view variances. We disagree, and find the petitioner's reliance on Lewis v. Department of Natural Resources, 377 Md. 382, 833 A.2d 563 (2003), to be misplaced. That case involved a request for a variance under the Chesapeake Bay Critical Area Protection Program. The Court of Appeals found that, under the local ordinance implementing the Program, the Wicomico County Board of Appeals was required to review and balance all of the criteria in the ordinance in order to determine whether strict enforcement of the law would deny a petitioner reasonable and significant use of his land. This is not the same standard applied to a variance in Montgomery County. Section 59-G-3.1 of the Zoning Ordinance clearly requires that a petitioner must meet all of the criteria enumerated in that section before a variance can be granted. Failure to meet any criterion results in denial of the variance.

Because the petition does not meet the requirements of Section 59-G-1.3(a) and (b), the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of seven (7) feet from the required twenty-five (25) foot front lot line setback and of three (3) feet as it reduces the required eighteen (18) foot sum of both side yards for the construction of a one-story addition are denied.

The Board adopted the following Resolution:

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, and with Angelo M. Caputo not in agreement, 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.

_____

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 20th day of April, 2004.

_____
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.