

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5970

PETITION OF MARILYN M. AND CORWIN V. EDWARDS

(Hearing held April 14, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, June 15, 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)(1). The existing non-conforming garage requires a four (4) foot variance as it is within three (3) feet of the side lot line and the petitioners propose to construct a one-story addition that requires a four (4) foot variance as it is within three (3) feet of the side lot line setback. The required setback is seven (7) feet.

The petitioners were represented by Michael Steiner, an architect, at the public hearing.

The subject property is Lot 7, Block A, located at 4834 Drummond Avenue, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00648725).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construction a 15 x 17.2 foot one-story addition.
2. Mr. Steiner testified that the proposed one-story addition will connect the residence with an existing non-conforming garage and that the addition will not be located in any of the property's setbacks. Mr. Steiner testified that because the garage is located in the eastern side yard setback, and will share a common wall with the proposed addition, a variance for the addition is required. See, Exhibit No. 7(c) [photo].
3. Mr. Steiner testified that the petitioners were granted a variance for the same structure in October 1988, but failed to construct the addition because the family was assigned overseas. See, Exhibit No. 10 [Opinion of the Board].

4. Mr. Steiner testified that the property is a narrow, shallow lot. Mr. Steiner testified that the width of the lot is 55 feet and its' width is narrower than the standard width for lots in the R-60 Zone. Mr. Steiner testified that property's area is further reduced by a creek that runs approximately ten feet behind the rear of the garage. 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 property is a narrow, shallow lot, with a width that is substandard for the R-60 Zone. The proposed addition will not encroach into any of the property's required setbacks, but will adjoin an existing non-conforming garage, located in the eastern side yard setback. The property has a creek that runs approximately 10-feet behind the rear of the garage. The Board finds that these conditions are peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners if the variances were to be denied.

The Board notes that petitioners received a prior variance in October 1988 for a similar structure, but that the variance request was never implemented.

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

The Board finds that the variances requested for the existing non-conforming garage and the construction of a 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 Board finds that the construction of a one-story addition will not materially impact the view from the neighboring properties and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of four (4) feet from the required seven (7) foot side lot line setback for the existing non-conforming garage and of four (4) feet from the required seven (7) foot side lot line setback for the 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 variances.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and (b) and 5(a) through 5(d).

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 Donna L. Barron was necessarily absent and did not participate in the Resolution. On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, 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 County Board of Appeals this 15th day of June, 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.