

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5993

PETITION OF PASQUALE AND REBECCA CIPOLLONE

(Hearing held July 14, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, August 26, 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-.323(a). The petitioners propose to construct a one-story addition that requires a 17.95 foot variance as it is within 35.50 feet of the established front building line (Carter Court) and a two-story addition that requires a variance of 15.25 feet as it is within 28.50 feet of established front building line (Carter Road). The required established building line on Carter Court is 53.45 feet and the required established building line on Carter Road is 43.75 feet.

Joseph A. Lynott, Sr., Esquire, and Sean Staples of MGD Design, represented the petitioners at the public hearing.

The subject property is Lot 4, Block B, Ashleigh Subdivision, located at 7610 Carter Court, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 871544).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose construct a one-story addition that will front on Carter Court and a two-story addition that will front on Carter Drive.
2. The petitioners' property is a trapezoidal-shaped lot. Carter Road and Carter Court wrap around a substantial portion of the petitioners' lot resulting in a peninsula of a lot. The property must meet an established building line requirement on both roads for the proposed construction. Lots 2 and 3 on the Carter Road side and Lots 5 and 6 on the Carter Court side, along with the petitioners' lot, were used in the calculations of the established building lines. The inclusion of Lot 6 in the established building line calculations skewed the calculations because of its extreme depth. See, Exhibit No. 10(a) [zoning vicinity map].
3. The location of the petitioners' lot and its irregular-shape substantially reduce its buildable envelope when compared to the other properties in the subdivision. The variances requested are not required for the complete

dimension of the proposed construction, but only a small corner of the new structures.

4. The petitioner testified that she has spoken with her neighbors and that the neighbors had no objections to the variance request. See, Exhibit Nos. 8(a) through 8(g) [letters of support] and Exhibit Nos. 12(d) and 12(e) [letters of support].
5. Mr. Staples testified that lot coverage for the property's existing structures is at 11% and that the new construction would only increase lot coverage by 7% to 18%. Mr. Staples testified that the new construction would not materially increase the bulk and mass of the residence and would not significantly impact the view from the neighboring and adjoining properties. Mr. Staples testified that the majority of the lots in the petitioners' subdivision have an available building envelope of 50%, while the petitioners' available building envelope is approximately 26%. See, Exhibit No. 10(b) [subdivision plat/survey map].

FINDINGS OF THE BOARD

Based on the petitioner's 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 petitioners' property is a trapezoidal-shaped lot. The subject property is located at the intersection of Carter Road and Carter Court and a significant portion of these two roads wrap around the petitioners' lot. The property's buildable envelope is severely limited because of these existing conditions. The established building line requirement further reduces the property's buildable envelope. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in an undue hardship for the petitioners.

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

The Board finds that the variances requested for the construction of a one-story addition and a two-story addition are the minimum 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 new construction would not significantly impact the view from the other homes in the neighborhood and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 17.95 feet from the required 53.45 foot established front building line for the construction of a one-story addition and of 15.25 feet from the required 43.75 foot established front building line for the 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, the testimony of their witnesses and the presentations of their attorney, 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(c).

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 Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron 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 26th day of August, 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.