

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-5995

PETITION OF MATTHEW A. BORTEN
(Hearing held July 7, 2004)

OPINION OF THE BOARD
(Effective date of Opinion, August 12, 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(a)(1)(2)(A). The existing single-family dwelling requires a variance of 24.91 feet as it is within 15.09 feet of the established front building line. The petitioner proposes to construct a one and one-half story addition to the residence that requires a variance of 7.82 feet as it is within 32.18 feet of the established front building line and an accessory structure/detached garage that requires a variance of 44.50 feet as it is within 20.50 of the established front building line.

The required established building line for the existing single-family dwelling and the one and one-half story addition is forty (40) feet and the required established building line for the accessory structure/detached garage is sixty-five (65) feet.

The subject property is located at 25325 Woodfield Road, Damascus, Maryland, 20872, in the RE-2C Zone (Tax Account No. 00942972).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a 30 x 22.5 foot one and one-half story addition and a 21 x 21 foot detached garage.
2. The subject property is an irregular, wedge-shaped lot, located at the intersection of Clearspring Road, Woodfield/Damascus Road and Hawkins Creamery Road. The petitioner testified that the original house was built in 1913 as a one-story sharecropper's cottage. The petitioner testified that the existing house is located in the required setbacks for Woodfield and Hawkins Creamery Roads. See, Exhibit No. 8 [zoning vicinity map].
3. The petitioner testified that the property has an AT&T Fiber Optic Cable easement located behind the residence in the southwest section of the property and that the location for the property's sewer system is in the northeast section of the lot. See, Exhibit No. 4 [site plan]. The petitioner

testified that the new construction will be in harmony with other homes in the neighborhood.

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 petitioner's property is an irregular, wedge-shaped lot. The existing house is currently located in the required setbacks for Woodfield and Hawkins Creamery Roads. The property's septic system is located in northeast section of the lot and an AT&T Fiber Optic Cable easement is located in the southwest section of the lot. The property is bordered on two sides by Woodfield Road, Clearspring Road and Hawkins Creamery Road.

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 owner were the variances to be denied.

- (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, one and one-half story addition and the detached garage 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 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 architectural design of the proposed construction will be in harmony with the other homes in the immediate vicinity and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 24.91 feet from the required forty (40) foot established front building line for the existing single-family dwelling, the requested variance of 7.82 feet from the required forty (40) foot established front building line for the construction of a one and one-half story addition and the requested variance of 44.50 feet from the required sixty-five (65) foot established front building line for the construction of an accessory structure/detached garage are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, 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 and 5(a) through 5(n).

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 members Louise L. Mayer and Angelo M. Caputo were necessarily absent and did not participate in this Resolution. On a motion by Donald H. Spence, Chairman, seconded by Donna L. Barron, in agreement, and with Allison Ishihara Fultz, in opposition, 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 12th 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.