

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6001

PETITION OF STEPHANIE A. AND R. EDWARD ALBERT, III

(Hearing held August 25, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, September 10, 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 existing single-family dwelling requires a variance of ten (10) feet as it is within fifteen (15) feet of the front lot line and the petitioners propose to construct a second-story addition that requires a variance of ten (10) feet as it is within fifteen (15) feet of the front lot line. The required setback is twenty-five (25) feet.

Richard Rosen, an architect, appeared with the petitioners at the public hearing.

The subject property is Lot 33, Block 3, Norwood Heights Subdivision, located at 6702 East Avenue, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00523396).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a second-story addition to the existing dwelling.
2. The petitioner testified that their lot is approximately 4,750 square feet, which is substandard for the R-60 Zone. The petitioners testified that the existing house is currently located in the front yard setback and that the proposed addition will not expand the footprint of the existing residence.
3. The petitioners testified that the houses on either side of their property are currently located in the front yard setback and that their house is in-line with the neighboring homes. See, Exhibit No. 14 [partial GIS map]. The petitioners testified that the materials of the addition will match the stucco and siding of the existing house. Mr. Rosen testified that of the most homes in the petitioners' immediate neighborhood are two-story structures and that the new construction will be in harmony with the other homes in neighborhood. See, Exhibit Nos. 8(a) through 8(c) [photographs].

4. The petitioners testified that their plans have been reviewed by the Town of Chevy Chase and their neighbors, and that there have been no objections to the variance request. See, Exhibit Nos. 9(a) and 9(b) [petition of support].

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 is currently located in the front yard setback. The construction of a second-story addition will not expand the footprint of the existing house. The petitioners' lot is approximately 4,750 square feet and it is substandard for the R-60 Zone. The Board finds that these are exceptional circumstances are peculiar to the petitioners' property and that strict application of the zoning regulations would result in practical difficulties for the property owners.

- (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 and the construction of a second-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 variance request 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 new construction will be in harmony with other homes in the immediate 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 ten (10) feet from the required twenty-five (25) foot front lot line setback for the existing single-family dwelling and of ten (10) feet from the

required twenty-five (25) foot front lot line setback for the construction of a second-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.

Board member Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, 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 10th day of September, 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.