

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6023

PETITION OF RACHEL B. KAPLAN AND JOHN R. BAILEY

(Hearing held October 20, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, November 16, 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 petitioners propose the construction of a two-story addition that requires a variance of 3.50 feet as it is within 3.50 feet of the side lot line and a one-story addition that requires a variance of two (2) feet as it is within five (5) feet of the side lot line. The variance request was amended at the public hearing to include a variance of 3.50 feet for the existing single-family as it is within 3.50 feet of the side lot line. The required side lot line setback is seven (7) feet.

Paul Treseder, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 24, Block 66B, Blair-Takoma Park Section One Subdivision, located at 722 Chesapeake Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 00990988).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a second-story addition over the existing single-story dwelling and a 10.33 x 27 foot one-story addition at the rear of the residence.
2. The petitioner testified that her house was built in 1925 and that the house is currently located in the eastern side yard setback. The petitioner testified that her lot is 4,830 square feet, that the width of lot is 50 feet wide, and that the length of lot is 96 feet. The petitioner testified that her lot is one of the six smallest lots in the neighborhood and that other lots in the neighborhood are at least 80% larger than her lot.
3. The petitioner testified that the addition will be built of the footprint of the existing dwelling and that the addition will not expand the footprint of the existing house. The petitioner testified that a driveway that leads to a

detached garage is located in the western side yard and that the driveway adjoins a similar driveway on adjoining Lot 25.

4. The petitioner testified that prior to May 2004, a 5-foot setback was required for lots like hers that were recorded prior to 1928. The petitioner testified that a recent ruling by the Department of Permitting Services (DPS) now requires a 7-foot setback for the side yards, which her lot must now meet. The proposed one-story addition will sit 5 feet from the eastern side yard boundary. See, Exhibit No. 9 [Code Interpretation/Policy, dated 5/5/04].

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 lot is 4,830 square feet. The lot is 50 feet in width. The width and size of the petitioner's lot is substandard for the R-60 Zone. The existing dwelling has existed for over 75 years and it is currently sited in the side yard setback. The construction of a second-story addition will not expand the footprint of the existing dwelling. The proposed construction of a one-story addition will be located further from the side yard setback than the existing dwelling.

The Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the zoning regulations would result in practical difficulties for the property owners. The Board further finds that petitioner's lot is an exceptionally small lot in a neighborhood of small lots. See, Exhibit No. 12 [zoning vicinity map].

- (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, the second-story addition and the 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 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 similar to other improvements in the neighborhood and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties. See, Exhibit No. 7(c) [photograph].

Accordingly, the requested variance of 3.50 feet from the required seven (7) foot side lot line setback for the existing single-family dwelling, the requested variance of 3.50 feet from the required seven (7) foot side lot line setback for the construction of a second-story addition and the variance of two (2) 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 petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her 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 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.

On a motion by Angelo M. Caputo, seconded by Wendell M. Holloway, with Donna L. Barron, Louise L. Mayer and Allison Ishihara Fultz, Chairman, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 16th day of November, 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.