

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6022

PETITION OF CORY AND DALE BEMIS

(Hearing held October 6, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, November 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 Section 59-C-1.323(a). The existing single-family dwelling requires a variance of six (6) feet as it is within nineteen (19) feet of the front lot line and the petitioners propose the construction of a second-story addition that requires a variance of six (6) feet as it is within nineteen (19) feet of the front lot line setback. The required setback is twenty-five (25) feet.

Robert Elbin, a designer, appeared with the petitioners at the public hearing.

The subject property is Lot 23, Block D, H. M. Martins Addition to Chevy Chase View Subdivision, located at 4501 Clearbrook Lane, Kensington, Maryland, 20895, in the R-60 Zone (Tax Account No. 0099988).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners seek variances for the existing dwelling and for the construction of a second-story addition.
2. The petitioner testified that her house was built in 1952 and that the house is currently located in the front yard setback. The petitioner testified that although the zoning vicinity map shows Clearbrook Lane as through street, it actually dead-ends at Lot Nos. 1 and 34, and turns into a narrow walking path. See, Exhibit No. 8 [zoning vicinity map].
3. The petitioner testified that over time the right-of-way has been widened and that with the widening of the right-of-way, their front yard has been reduced. The petitioner testified that a grass-covered section of her front yard is actually in the right-of-way easement. See, Exhibit No. 7(b) [photograph]. The petitioner testified that their lot is the smallest, narrowest lot among the 64 neighboring lots. The petitioner testified that the neighborhood consists of

approximately 64 lots that range in square footage of 6,268 to 41,916 square feet. See, Exhibit No. 10(b) [lot comparison sheet]. The petitioners' lot is 5610 square feet.

4. Mr. Elbin testified that the new addition will be built on the footprint of existing the house and that the addition will not expand the house's footprint. Mr. Edlin testified that the second-story addition will have a 10-inch overhang of ornamental brackets to soften the visible impact of the front of the house.

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 petitioners' lot is 5,610 square feet. The lot is substandard for the minimum lot size for the R-60 Zone. The petitioners' lot is the smallest and narrowest lot in their neighborhood. The petitioners' house has existed for over 50 years and the house is located in the front yard setback. The proposed construction will not expand the footprint of the existing house.

The Board finds that these are exceptional circumstances peculiar to the petitioners' property and that the 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 house 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 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 design of the second-story addition will minimize the visual impact on the other homes in the immediate area and that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of six (6) feet from the required twenty-five (25) foot front lot line setback for the existing single-family dwelling and of six (6) 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(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 Angelo M. Caputo was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Wendell M. Holloway 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 12th 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 which the variance granted by the Board must be exercised.

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.