

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6028

PETITION OF CHARLES HEWLETT

(Hearings held November 10 and December 1, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, January 21, 2005)

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 a variance from Sections 9-C-1.323(a) and 59-A-5.33. The petitioner proposes to construct a two-story addition that requires a five (5) foot variance as it is within twenty-four (24) feet of the established front building line. The required established building line in twenty-nine (29) feet.

Tom Gilday and Maurice Mead of Gilday Architects appeared with the petitioner at the public hearing.

The subject property is Lot 11, Block 6, Brookdale Subdivision, located at 5201 Westport Road, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00558076).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 15 x 20.4 foot two-story addition.
2. The petitioner testified that the shape and shallowness of his lot are the reasons for the variance request. The petitioner testified that his lot is a corner property with no rear yard given the required setbacks and that the proposed addition would not obstruct any of the site-lines along Merivale and Westport Roads.
3. Mr. Hewlett testified that the existing footprint of the petitioner's house is approximately 1,000 square feet and that it is significantly smaller than the houses that surround it. Mr. Hewlett testified that the houses along Merivale Road are all two-story houses and that the other houses in the petitioner's immediate neighborhood have a much greater building envelope. Mr. Gilday testified that the setbacks applied to the petitioner's property reduce the buildable envelope to practically nothing and eliminate the possibility of new construction in the rear yard.

4. At the December 1, 2004 hearing, the petitioner provided a comparison chart of the houses and lot sizes of the homes in his neighborhood. The chart shows that in the petitioner's immediate neighborhood the footprint of his house is the smallest on Westport Road, on Merivale Road only two houses out of six have smaller footprints, and on Dalton Road two houses have the same footprint as the petitioner's house. Additionally, the chart shows that the petitioner's lot has the smallest buildable envelope in his neighborhood. See, Exhibit No. 13(a) through 13(p).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies 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 has an exceptionally shallow lot, with a very small buildable envelope. The property's buildable envelope is significant smaller than most of the lots in the neighborhood. The Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the regulations would result in practical difficulties for the property owner.

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

The Board finds that the variance request for the construction of a two-story addition is 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 proposed construction will continue the residential use of the property and the variance 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 proposed design of the addition will be in harmony with other improvements in the neighborhood and the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of five (5) feet from the required twenty-nine (29) foot established front building line is granted subject to the following conditions:

1. The petitioners shall be bound by all of his 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).

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 Louise L. Mayer, seconded by Angelo M. Caputo, with Wendell M. Holloway and Donna L. Barron, Vice Chair, agreement, and Allison Ishihara Fultz, Chair, recused, the Board adopted the foregoing Resolution.

Donna L. Barron
Vice Chair, 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 21st day of January, 2005.

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.