

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6030

PETITION OF ELLEN J. DURKEE

(Hearings held November 17 and December 8, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, January 28, 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 variances from Section 59-C-1.323(b)(1). The existing single-family dwelling requires a 1.80 foot variance as it is within 5.20 feet of the side lot line and the petitioner proposes the construction of a second-story addition that requires a variance of 1.80 feet as it is within 5.20 of the side lot line. The required setback is seven (7) feet.

James Solomon, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 90, Block 67, located at 7902 Takoma Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01074277).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a second-story addition over the existing single-story dwelling.
2. The petitioner testified that her property is a small, narrow lot. The lot is 5,150 square feet. The petitioner testified that the existing house is currently located in the northern side yard setback and that the proposed addition will not increase the existing footprint of the house.
3. At the December 8, 2004 hearing, Mr. Soloman submitted a Lot Size Comparison Chart, which shows the properties within 1,000 feet of the petitioner's lot. See, Exhibit No. 13 [Lot Size Comparison Chart]. Mr. Soloman testified that the many of the lots in the neighborhood were platted in the early 1950s and that many of the lots platted during that time are substandard for the R-60 Zone.
4. Mr. Soloman testified that the petitioner's lot is smaller than most lots in the neighborhood and that only two lots in the immediate area are smaller. Mr.

Soloman testified that most homes in the neighborhood are two-story structures and that the design of the proposed construction will be in harmony with the neighboring houses.

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 has a small, narrow lot that is 5,150 square feet. The lot is substandard for the R-60 Zone and it is one of three of the smallest lots in the area. The existing single-family dwelling is currently located in the side 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 property and that the strict application of the zoning regulations would result in peculiar or unusual 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 variances requested for the existing single-family dwelling and the construction of a second-story addition are the minimum reasonably.

- (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 variances requested 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 proposed construction will be in harmony with other homes in the 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 1.80 feet from the required seven (7) foot side lot line setback for the existing single-family dwelling and of 1.80 feet from the required

seven (7) foot side lot line setback for the construction of a second-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(a) and 4(b) and 5(a) through 5(g).

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

Allison Ishihara Fultz
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 28th 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.