

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6229

PETITION OF RICHARD BARRY

(Hearings held October 10, 2007 and March 19, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, April 17, 2008)

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 Sections 59-C-1.323(a) and 59-C-1.323(b)(1). (1) The existing single-family dwelling requires a variance of five (5) feet as it is within thirty-five and three tenths (35.3) feet of the front lot line setback (Shepherd Street); (2) the petitioner proposes the construction of a two-story addition that requires a variance of seventeen (17) feet as it is within twenty-three and three tenths (23.3) feet of the front lot line setback (Shepherd Street); and (3) the petitioner proposes the construction of a one-story addition that requires a variance of two and four tenths (2.4) feet as it is within four and six tenths (4.6) feet of the side lot line. The required established building line from Shepherd Street is forty and three tenths (40.3) feet and the required side lot line setback is seven (7) feet.

Rebecca Barry, the petitioner's wife, appeared with the petitioner at the October 10, 2007 public hearing and Paul Gaiser, an architect, appeared with the petitioner at both public hearings.

The subject property is Lot P49, Block 4, Chevy Chase Section 3 Subdivision, located at 6815 Fulton Street, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00460015).

Decision of the Board: Requested variance for the existing single-family dwelling (Shepherd Street) **not required**.

Requested variance for the one-story addition **granted**.

Requested variance for the two-story addition **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The existing single-family dwelling is currently sited in the front yard setback (Shepherd Street) and the petitioner proposes the construction of a one-story addition and a two-story addition.

2. Mr. Gaiser testified that the subject property is trapezoidal in shape and that it is 9,337 square feet in size. Mr. Gaiser testified that the existing house's footprint is 1,171 square feet and that the house's footprint would increase to 1,619 square feet with the proposed additions. Mr. Gaiser testified that the lot's buildable envelope is 3,274 square feet and that the proposed construction would result in lot coverage of 35%. The subject property was platted in 1927.
3. Mr. Gaiser testified that the subject property is unique because it has three fronts: Shepherd Street, Fulton Street, and Spring Street, two side yards and but no rear yard. Mr. Gaiser testified that there are three lots in the petitioner's neighborhood that share these characteristics, but that the petitioner's lot is the smallest of the three lots. Mr. Gaiser testified that the odd shape of the lot severely impacts the property's buildable envelope. See Exhibit Nos. 4 [site plan] and 8 [zoning vicinity map].
4. Mr. Gaiser testified that the proposed two-story addition can not be located in the southern side yard because of the functionality of the internal layout of the house and that to site the addition in the southern side yard would require the physical movement of the house's existing plumbing, its kitchen and dining room. Mr. Gaiser testified that because of the trapezoidal shape of the lot it is difficult to design any additional cohesive living space of a decent dimension.
5. The petitioner testified that the proposed construction was designed to maintain the spirit of the architecture of the neighborhood.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the requested variance from the established building line (Shepherd Street) for the construction of a two-story addition must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 Board finds that the petitioner's lot is irregularly shaped and has three front yards, two side yards and no rear yard. However, the Board finds that the requested variance for a two-story addition in the northern side yard is not related to the shape of the lot or the application of the zoning regulations to the subject property. The Board finds that the subject property is 50% larger than the required minimum lot size for the zone and that neither the siting of a house nor consideration of the design elements are factors which justify the grant of a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of seventeen (17) feet from the required forty and three tenths (40.3) foot established front building line (Shepherd Street) for the construction of a two-story addition is denied.

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 David K. Perdue, seconded by Wendell M. Holloway, with Caryn L. Hines, Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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 Board finds that the existing single-family residence does not require a variance from Shepherd Street. The Board notes that this finding is consistent with the policy set forth in *Section 5-114, Courts and Judicial Proceedings Article*, which bars the government from proceeding against a structure, in violation of the setback restriction, which has been in existence for more than 3 years and which was constructed pursuant to a valid building permit.

The Board finds that the subject property is an irregularly shaped lot, which has three fronts, two side yards and no rear yard. The property was platted in 1927. The Board finds that this is an exceptional circumstance and that the strict application of the Zoning Ordinance regulations would result in practical difficulties to and an undue hardship upon the property owner with respect to the proposed one-story addition.

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

The Board finds that the variance requested for the construction of a one-story addition is 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 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 Board finds that the proposed addition will not be detrimental to the use and enjoyment of the adjoining and neighboring property owners.

Accordingly, the requested variance of two and four tenths (2.4) feet from the required seven (7) foot side lot line setback for the construction of one-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witness, 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(p).

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 David K. Perdue, seconded by Wendell M. Holloway, with Caryn L. Hines, Catherine G. Titus 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 17th day of April, 2008

Katherine Freeman
Executive Director

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.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.