

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6233

PETITION OF BRIAN THOMPSON

(Hearing held December 12, 2007)

OPINION OF THE BOARD

CLERICAL CORRECTION: REQUESTED VARIANCE (PAGE 4)

(Effective date of Opinion, January 10, 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 Section 59-C-1.323(a) (established front building line). (1) The existing single-family dwelling requires a variance of sixty-six and nine tenths (66.90) feet, as it is within twenty-four and one tenth (24.10) feet of the front property line (Maple Avenue); (2) the existing single-family dwelling also requires a variance of one and six tenths (1.60) feet, as it is within thirty-seven (37) feet of the front property line (Rosemere Avenue); (3) the petitioner proposes the construction of a second-story addition that requires a variance of sixty-six and nine tenths (66.90) feet, as it is within twenty-four and one tenth (24.10) feet of the front property line (Maple Avenue); (4) the proposed construction of a second-story addition also requires a variance of one and six tenths (1.60) feet, as it is within thirty-seven (37) feet of the front property line (Rosemere Avenue); (5) the proposed construction of a two-story addition that requires a variance of seventy-six (76) feet, as it is within fifteen (15) feet of the front property line (Maple Avenue). The required established building line from Maple Avenue is ninety-one (91) feet and the required established building line from Rosemere Avenue is thirty-eight and six tenths (38.60) feet.

The subject property is Lot P13, Block C, Hollywood Park Subdivision, located at 922 Rosemere Avenue, Silver Spring, Maryland, 20904, in the R-90 Zone (Tax Account No. 00291306).

Decision of the Board: Requested variances for the existing single-family dwelling (Maple Avenue and Rosemere Avenue) **not required**.

Requested variances for a second-story addition (Maple and Rosemere Avenues) **granted**.

Requested variance for a two-story addition (Maple Avenue) **granted as amended**.

EVIDENCE PRESENTED TO THE BOARD

1. The existing single-family dwelling requires variances from Maple and Rosemere Avenues. The petitioner also proposes the construction of a second-story addition and a two-story addition.
2. The petitioner testified that his house was built in 1928 and that the existing house is located in both the established building lines for Maple and Rosemere Avenues. The petitioner testified that the second-story addition will be built on the footprint of the existing house and that the proposed addition will not expand or increase beyond the house's existing footprint.
3. The petitioner testified that the subject property is a narrow, shallow rectangular lot, which is located at the intersection of Maple and Rosemere Avenues. The petitioner testified that the size of the subject property is 7,844 square feet and that his lot size is substandard for the R-90 Zone. The petitioner testified that his property is 54.375 feet in width, which is also substandard for the zone. The petitioner testified that the required established building from Maple Avenue is 91 feet and that the required established building line from Maple Avenue exceeds the width of his lot. Therefore, his entire property lies within the setback determined by the established building line from Maple Avenue. See Exhibit No. 4(a) [existing and proposed architectural site plans].
4. The petitioner testified that the majority of houses along Rosemere Avenue are aligned with each other and that these houses are sited 30 to 49 feet from the street. The petitioner testified that the houses along Maple Avenue are staggered in location and that they are sited well behind his lot. The petitioner testified that the houses on these lots are sited from 34 to 155 feet from the street. See Exhibit No. 11 [established building line diagram].
5. The petitioner testified that the site for the proposed two-story garage addition was chosen because the property's existing curb-cut is located on Maple Avenue. The petitioner requested a 76 foot variance from Maple Avenue for the two-story addition. The petitioner testified a fire hydrant is located at the corner of Rosemere and Maple Avenues and that the County has an easement for this section of the lot to accommodate the fire hydrant.

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 as amended. 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 Board finds that the existing single-family dwelling has been in existence since 1928 and that the house is currently sited in the required established building lines for Maple and Rosemere Avenues. The Board finds that the subject property is uniquely burdened by the strict application of the required established building lines.

The Board finds that the construction of a second-story addition will not materially alter or expand the footprint of the existing house. The Board finds that the subject property is a narrow and shallow lot and that it is significantly smaller than the minimum lot size for the zone. The Board notes the petitioner's lot is substandard in size and width for the R-90 Zone.

The Board finds that the existing single-family residence does not require variances from Maple and Rosemere Avenues. 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 restrictions, which has been in existence for more than 3 years and was constructed pursuant to an otherwise valid building permit.

The Board finds that these are exceptional circumstances and conditions and that the strict application of the zoning regulations will result in practical difficulties and an undue hardship upon the property owner.

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

The Board finds that the variances requested, as amended, for the construction of a second-story and two-story additions 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 proposed construction will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

(1) Accordingly, the requested variance for the existing single-family dwelling of sixty-six and nine tenths (66.90) feet as it is within twenty-four and one tenth (24.10) feet of the front property line (Maple Avenue), and (2) the requested variance for the existing single-family dwelling of one and six tenths (1.60) feet as it is within thirty-seven (37) feet of the front property line (Rosemere Avenue) are not required in accordance with the County's zoning regulations. On a motion by David K. Perdue, seconded by Caryn L. Hines, with Wendell M. Holloway, Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

(3) Furthermore, Accordingly, the requested variance one and six tenths (1.60) feet for the construction of a second-story addition to within thirty-seven (37) feet of the front property line (Rosemere Avenue) is **granted**. (4) **The requested variance of sixty-six and nine tenths (66.90) tenths feet also for the construction of a second-story addition as it is within twenty-four and one tenth (24.10) feet of the front property line (Maple Avenue) is granted.** On a motion by David K. Perdue, seconded by Catherine G. Titus, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

(5) Furthermore, the requested variance of seventy-six (76) feet for the construction of a two-story addition to within seventy-six (76) feet of the front property line (Maple Avenue), was amended, to sixty-six and nine tenths (66.90) feet for the two-story addition to within twenty-four and one tenth (24.10) feet of the front property line (Maple Avenue) is **granted**. On a motion by David K. Perdue, seconded by Wendell M. Holloway, with Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, and with Caryn L. Hines, in opposition, the Board adopted the foregoing Resolution.

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

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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 10th day of January, 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.