

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6260

PETITION OF JOHN GRANT AND ROSALIE BAIR
(Hearing held September 17, 2008)

OPINION OF THE BOARD
(Effective date of Opinion, October 24, 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 a variance from Section 59-C-1.323(a). The petitioners propose the construction of a two and one-half (2.5) story addition that requires a variance of sixty-two and twenty-five hundredths (62.25) feet as it is within twelve (12) feet of the front lot line setback. The required established front building line is seventy-four and twenty-five hundredths (74.25) feet.

Rosalie Bair, the petitioner, was represented by Douglas Rixley, an architect, at the public hearing.

The subject property is Lot 8, Block 2, Kenwood Section 5 Subdivision, located at 5800 Highland Drive, Chevy Chase, Maryland, 20815, in the R-90 Zone (Tax Account No. 00517726).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a two and one-half (2.5) story addition in the southwest section of the property.
2. Mr. Rixley testified that the subject property is a corner lot located at the intersection of River Road and Highland Drive. Mr. Rixley testified that the lot is uniquely shaped, with an acute angled shape. Mr. Rixley testified that River Road and Highland Drive wrap around two-thirds of the lot. Mr. Rixley testified that the petitioners' lot is more angled and smaller than other similarly shaped lots in the neighborhood. Mr. Rixley testified that the typical acute angled lots in the immediate neighborhood average about 18,000 square feet and that

the subject property is approximately 11,000 square feet. See Exhibit No. 13 [enlarged zoning vicinity map].

3. Mr. Rixley testified that the application of established building lines from River Road and Highland Drive result in a buildable envelope that is 10 square feet in size, which would make the lot unbuildable. Mr. Rixley testified that the proposed addition will not extend beyond that the facades of the existing houses on River Road and Highland Drive. Mr. Rixley testified that the distance between the proposed addition and the intersection of the two streets is approximately 256 feet. See Exhibit No. 4 [site plan].

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 petitioners' property is a uniquely shaped lot with an acutely angled shape. The Board finds that the application of the established building line requirement to the subject property results in a buildable envelope that is 10 square feet. The Board finds that these conditions are peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (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 two and one-half (2.5) 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 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 variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of sixty-two and twenty-five hundredths (62.25) feet from the required seventy-four and twenty-five (74.25) foot required established front building line for the construction of a two and one-half (2.5) story addition is 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 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(a) and 4(b) and 5(a) through 5(h).

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 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 24th day of October, 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.