

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. A-6414

PETITION OF ANDREW L. YARROW

OPINION OF THE BOARD

(Opinion Adopted September 4, 2013)
(Effective Date of Opinion: September 20, 2013)

Case No. A-6414 is an application by Andrew L. Yarrow for a 5.17-foot variance because the existing width of his lot at the building line is 69.83 ft. The required lot width is 75 feet, in accordance with Sections 59-C-1.322(b) of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on September 4, 2013. Andrew Yarrow appeared and testified on his own behalf. David W. Brown, Esquire, appeared on behalf of Dwight and Sandra Lipin and James Gray, Jr., who oppose the variance. Mr. Brown called Dwight and Sandra Lipin and Robert L. Young as witnesses. The record contains letters of opposition to the variance from Robert Young, James Gray, Choichi Eguchi and Patricia Brouillire.

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

EVIDENCE PRESENTED

1. The subject property is Lot P2, Block 4, 0024 Subdivision, located at 7509 Oldchester Road, Bethesda, Maryland, 20817, in the R-90 Zone.
2. In his application materials [Exhibit No. 3] and in his testimony, Mr. Yarrow stated that he seeks the variance in order to be able to build a new home in accordance with the zoning standard in effect when his lot was originally recorded in 1913 [Exhibit No. 4(c)]. Mr. Yarrow explains that in a Deed dated February 19, 1988 (a copy of which is attached to Exhibit No. 12), the prior owners of his property conveyed a portion of the property, specifically a 2-inch wide, 150-foot long strip of land on the southern side of the lot, to the abutting property owner. That conveyance resulted in re-

of the lot, to the abutting property owner. That conveyance resulted in replatting and re-recording of the property in 1988, making the current development standards for the R-90 zone applicable to his property. It also reduced the width of the property to 69.83 feet at the building line.

3. Mr. Yarrow purchased the property in 2002. He was made aware of the above-described conveyance in an exhibit attached to the deed conveying the property to him [Exhibit No. 7, Exhibit 'A'], but was not aware of the zoning implications of the conveyance.

4. Mr. Yarrow stated that many large houses have been built in the neighborhood as 'tear downs.' He explained that he had declined numerous offers to purchase his property for a tear down, and intended to add onto his home, but was told by many builders that improvements to the existing house would "basically be lost cost." He said that when he began to consider selling his property to a builder, he discovered to his surprise that the previous sale of the two-inch strip of the property now prevents construction of a new house on the lot, which prevents him from receiving the full value of the property.

5. Mr. Yarrow stated that the constraint against new construction on his property, resulting from the sale of the strip of land in 1988, is a situation that is unique to his property. He stated that he should have the same rights as other property owners in the neighborhood.

6. Mr. Yarrow also stated that although the strip of land sold was only two inches wide, the result was that his lot is too narrow to build a new house on it. and thus the lot is exceptionally narrow.

7. On cross examination, Mr. Yarrow confirmed that he paid \$689,000. for his property, and that he was aware that the prior owners had conveyed away a two-inch by 150-foot strip of the lot. He stated that he was not aware of the implications of that conveyance. He also confirmed that the State Department of Assessments and Taxation's assessment for his property is \$881,000, which he believes is less than the property's value as a tear-down.

8. Robert Young is a confronting property owner and Realtor who opposes the variance application. Mr. Young stated that variances should be granted for highly unusual circumstances, not strictly for financial gain and that granting a variance sets a precedent. Mr. Young stated that a new house can be built on Mr. Yarrow's property, just not as large as the house shown in the variance application.

9. On cross-examination, Mr. Young stated that he had approached Mr. Yarrow about selling Mr. Yarrow's property.

10. Dwight Lipin is an abutting property owner at 7511 Oldchester Road. Mr. Lipin attributed significant runoff problems in the neighborhood to the construction of new homes. Mr. Lipin stated that there is nothing unique about Mr. Yarrow's property. Mr. Lipin stated that Mr. Yarrow's lot is not as wide as other lots on the street. Mr. Lipin stated that construction of the house proposed in Mr. Yarrow's variance application would infringe upon his privacy because of its height and proximity to his house and that it might adversely impact safety in case of fire, and access to his home. Mr. Lipin disputed that Mr. Yarrow would suffer practical difficulties or undue hardship if he does not receive the variance, stating that Mr. Yarrow can improve his house and sell the property for increased value.

11. Sandra Lipin is also an abutting property owner at 7511 Oldchester Road. Ms. Lipin stated that Mr. Yarrow's hope for financial gain does not justify a variance. She stated that Mr. Yarrow will not suffer a hardship if he does not receive the variance because he was able to purchase another home. Ms. Lipin stated that the construction of large houses in the neighborhood has been detrimental because it has caused runoff.

12. In his closing statement Mr. Brown disputed there is anything unique about Mr. Yarrow's property, stating that the plat for the subdivision shows some lots that are 70 feet wide. Mr. Brown stated that Mr. Yarrow could sell his property and "realize a handsome profit." Mr. Brown asserts that "the application fails to disclose any practical difficulty or undue hardship that would warrant the variance relief requested." Acknowledging that Mr. Yarrow's property cannot utilize grandfathered development standards pursuant to Sections 59-B-5.1 and 59-B-5.3 of the Zoning Ordinance, because Mr. Yarrow's predecessors in title sold a portion of the property in 1988, and quoting Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 554-55, 214 A.2d 810, 814 (1965), Mr. Brown argues that the hardship Mr. Yarrow asserts is self created;

If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused by the property owner or his predecessor in title, the essential basis of the variance, i.e. that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such a case a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief.

CONCLUSIONS OF LAW

Section 59-G-3.1. Authority – Board of Appeals


The Board of Appeals may grant petitions for variances as authorized in Section 59-A-4.11(b) upon proof by a preponderance of the evidence that:

- (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 agrees that the hardship Mr. Yarrow asserts, that the sale, by his predecessors in title, of a portion of the lot he now owns, prevents him from realizing the full value of the property, is in fact a self created hardship under Salisbury Board of Zoning Appeals v. Bounds that precludes him from receiving a variance. The variance must be denied.

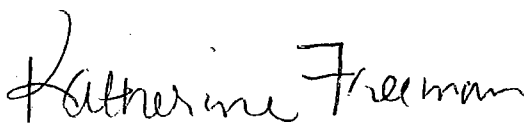
On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with John H. Pentecost and David K. Perdue, Vice-Chair, in agreement and Catherine G. Titus, Chair, necessarily absent, the Board adopts the following Resolution:

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.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of September, 2013.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date 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.

