

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5891

PETITION OF MAGRUDER/REED COMMUNITIES, LLC

(Hearing held June 18, 2003)

OPINION OF THE BOARD

(Effective Date of Opinion, August 21, 2003)

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-1.732(c)(1). The petitioner proposes propose to construct a townhouse that requires a 5.83 foot variance as it is within 4.17 feet of the side lot line setback. The required setback is ten (10) feet.

Scott Reed of Magruder/Reed Communities, LLC, appeared at the public hearing and was represented by Anne C. Martin, Esquire, James McDonald, architect, and Trini M. Rodriguez, land planner and landscape architect.

The subject property is Lot 7, Block 3, Rosedale Park Subdivision, located at 4714 Chestnut Street, Bethesda, Maryland, 20814, in the RT-12.5 Zone, (Tax Account No. 03384863).

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

EVIDENCE PRESENTED TO THE BOARD

1. The subject property currently consists of 20,000 square feet on four lots that were reclassified from the R-60 Zone to the RT-12.5 Zone by the County Council on March 11, 2003, in Case No. G-797. Case No. G-797 permitted the construction of a new six townhouse development that is comprised of three townhouses facing Chestnut Street, three townhouses facing Rosedale Avenue, and a park area in front of the Rosedale Avenue townhouses. See, Exhibit No. 4 [site plan], No. 10(a) [Zoning Text Amendment G-797], and No. 12 [rendered site plan].
2. Mr. Reed testified that the concept for the townhouses was to be a transition use from the high density use on Wisconsin Avenue. A public park is also proposed on the subject property. Mr. Reed testified that during the review of Case No. G-797, the Department of

Public Works and Transportation (DPWT) and the Department of Permitting Services (DPS) required that at the time of subdivision, six feet of the property would need to be dedicated to widen the existing 10-foot alley for the portion of the alley that is accessed from Chestnut Street to provide the access to the proposed townhouses.

3. Vehicular access to the townhouses will be through rear entrance garages for each townhouse. The garages that are to be accessed by a public alley located to the west of the property which connects with Chestnut Street and Rosedale Avenue. The alley widening is depicted on the Schematic Development Plan [See, Exhibit No. 4/site plan].
4. Ms. Rodriguez testified that the townhouse development was also intended to form an urban design edge by provision of the park and to achieve the Bethesda CBD Master Plan objective of providing a residential transition area. See, Exhibit No. 17 [master plan excerpt]. The park is a part of the 57.3 percent green area required for the subject property pursuant to the binding elements of the Schematic Development Plan in Case No. G-797. See, Exhibit No. 10(b) [development standards].
5. Ms. Rodriguez testified that DPWT and DPS required the widening of only a portion of the alley to access the townhouses in order to maintain the right-of-way as an alley, not a street, and to conform to the goal of the community to deter cut-through traffic through the neighborhood. Ms. Rodriguez further testified that the grant of the variance would be consistent with this goal because the narrow alley would maintain the appearance of an alley from Chestnut Street.
6. Mr. Reed testified that the location of the townhouse that would be adjacent to the alley would be set back almost nine feet further from the alley than the existing dwelling on the property.
7. Mr. McDonald testified that the widening of the alley creates the need for a 5.83 foot variance to maintain the proposed alignment of the row of the three townhouses on Chestnut Street. The area west and opposite of the alley is an office condominium development in the CBD-1 Zone that is located on the property line of the alley. The office condominium project has no windows facing east toward the proposed townhouses. See, Exhibit No. 5a [Chestnut Street and park elevation] and No. 14 [photograph].
8. Mr. McDonald testified that the variance request is necessary to maintain the alignment of the townhouses and in order to provide proper vehicular circulation for townhouse garage access.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, and the Board finds that the variance can be granted. The requested variance complies with the application standards and requirement 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 subject property has been reclassified by the Montgomery County Council from a R-60 Zone to an RT-12.5 Zone on March 11, 2003, in Case No. G-797. The Schematic Development Plan in Case No. G-797 required that the six feet of the property be dedicated to the widening of the existing alley.

The widening of the alley would maintain the alignment of the proposed townhouses that are to be constructed on the property. The proposed development will be a transition use from the high density use on Wisconsin Avenue and will provide a park, which is proposed on the subject property.

The Board finds that these are exceptional circumstances and that the strict application of the regulations would result in practical difficulties for the petitioner were the variance to be denied.

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

The Board finds that the variance requested for the proposed construction of a townhouse is the minimum reasonably necessary.

- (c) *Such a 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. The Board further finds that the variance request is consistent with the Bethesda CBD Master Plan and that the property will be maintained as a residential transition area.

- (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 setback further from the alley than the property's existing dwelling and that the variance

will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 5.83 feet from the required ten (10) foot side lot line setback for the construction of a townhouse is granted, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, torney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction shall be completed according to the plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(c).

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.

Board member Louise L. Mayer was necessarily absent and did not participate in the Resolution. On a motion by Donald H. Spence, Jr., Chairman, seconded by Angelo M. Caputo, with Donna L. Barron and Allison Ishihara Fultz, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, 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 21st day of August, 2003.

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.

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 Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

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 of after the date the Opinion is mailed and entered into the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's rules of Procedure for specific instructions requesting reconsideration.