

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6009

PETITION OF STINSON WOODHAVEN, LLC

(Hearing held September 1, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, October 1, 2004)

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 petitioner proposes to construct a new single-family dwelling that requires a variance of 8.84 feet as it is within 25.60 feet of the established front building line. The required established building line is 34.44 feet.

The petitioner was represented at the public hearing by Gus Bauman, Esquire and Jim Glascock, an engineer.

The subject property is Lot 4, Block D, Woodhaven Subdivision, located at 8311 Whittier Boulevard, Bethesda, Maryland, 20817, in the R-90 Zone (Tax Account No. 0703437563).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to demolish the existing single-family dwelling and reconstruct a new single-family dwelling.
2. The petitioner testified that the property is located at the intersection of three streets [Whittier Boulevard, Woodhaven Boulevard and Alcott Road]. The petitioner testified that the subject property originally consisted of two recorded, buildable lots [Lots 1 and 4], on which the existing house straddles the two lots. See, Exhibit No. 17 [site plan with existing house]. The existing house was built in 1938.
3. The petitioner testified that his lot is exceptionally shallow and that it is adversely impacted by the established building line. The petitioner testified that the width of the right-of-way on Whittier Boulevard changes at the front of his property. See, Exhibit No. 7 [zoning vicinity map]. The petitioner testified that the design, size and scale of the new dwelling will be in character with the other homes in the neighborhood.

4. Mr. Glascock testified that Lots 7, 9 and 10 on Whittier Boulevard were used in the calculation of the established building line. Mr. Glascock testified that when Lot 4 was created in 1936, the dedicated width for Whittier Boulevard was 100 feet, that in 1941 when Lot 7 was created the dedicated width for Whittier Boulevard was also 100 feet, but in 1980 when Lots 8 through 11 were created, the dedicated width for Whittier Boulevard was 74 feet.
5. Mr. Glascock testified that the 26 foot reduction in the right-of-way for Lots 8 through 11 was added to the depth of those lots. Mr. Glascock testified that the subject property is a triangular-shaped, shallow lot that is 6,603 square feet. Mr. Glascock testified that the average depth of the lots used in the established building line calculation is 126.23 feet, and that the average depth for petitioner's lot is 71 feet, making it 56% shallower than Lots 7, 9 and 10.
6. Mr. Glascock requested that the variance be amended by 0.6 feet for a variance of 9.44 feet, to allow for a little flexibility in the new construction. Mr. Bauman stated that the record reflects a requested variance of a reduction from the 34.44 feet established building line to 25 feet. See, Exhibit No. 1 [variance application].

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 property is a shallow, triangular-shaped lot. The lot is 6,603 square feet and it is substandard for the R-90 Zone. The proposed construction will demolish an existing dwelling that straddles Lots 1 and 4 and reconstruct a new dwelling on Lot 4. The new construction must meet an established building line requirement. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owner.

The requested variance of 8.84 feet was amended to 9.44 feet.

- (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 new single-family dwelling 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 new single-family dwelling will be similar in size, scale and design to the other homes in the neighborhood and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the amended variance of 9.44 feet from the required 34.44 foot established front building line for the construction of a new single-family dwelling 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 witnesses and the representation of his attorney, 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) through 4(c) and 5(a) through 5(g).

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 Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Donald H. Spence, Jr., Chairman, with Louise L. Mayer and Allison Ishihara Fultz, in agreement, the Board adopted the foregoing 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 1st day of October, 2004.

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.

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.