

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6161

PETITION OF VARTHANSIAMI AND LALSANGLIANA SAILO

(Hearing held October 18, 2006)

OPINION OF THE BOARD

(Effective date of Opinion, February 22, 2007)

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-B-5.1(b). The petitioners propose the construction of a new single-family dwelling that requires a variance of five (5) feet as it is within twenty-five (25) feet of the streetline setback (Snow Creek Drive) and a variance of ten (10) feet as it is within zero (0) feet of the side lot line setback. The required streetline setback is thirty (30) feet and the required side lot line setback is ten (10) feet.

Soo Lee-Cho, Esquire, represented the petitioners at the public hearing and Charles Grimsley, a civil engineer and Martin Berman, a home-builder, appeared in support of the variance request.

The subject property is Lot 9, Block 37, Laytonia Subdivision, located at 18031 Snow Creek Drive, Gaithersburg, Maryland, 20877, in the R-200 Zone (Tax Account No. 0900792787).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to demolish the existing single-family dwelling and to construct a new single-family dwelling.
2. The subject property is a corner lot located at the intersection of Snow Creek Drive and Muncaster Mill Road. Ms. Lee-Cho stated that the applicant contacted the Development Review Section of the Maryland-National Capitol Park and Planning Commission (M-NCPPC) about the possibility of subdividing of Part Lot 8 and the subject property, adjacent Lot 9, but that the current subdivision requirements for the R-200 Zone require that any newly platted lots must meet the current lot size for the R-200 Zone, which is a minimum of 20,000 square feet.

The total square footage of both Part Lot 8 and Lot 9 is 11,300 square feet. Ms. Lee-Cho stated that the petitioners are also the owners of Lot 7, Part Lot 8, and Lot 9. Lot 7 and Part Lot 8 adjoin the subject property at its northern boundary. See Exhibits 4 [site plan] and 7(a) [zoning vicinity map].

3. Ms. Lee-Cho stated that the existing house was built in 1921 and that the house is sited on one and a half recorded plats. Ms. Lee-Cho stated that the subject property and Lots 10-14 along Snow Creek Drive appear to have been developed under the R-60 standards, even though they are now located in R-200 Zone. Ms. Lee-Cho stated that the application of the required setbacks to the subject property result in a shallow buildable envelope. Ms. Lee-Cho stated that the proposed construction would not need both of the requested variance, but that a variance from either streetline setback or the side lot line setback would permit the property owners to build house with a reasonable depth of 24-27 feet.
4. Mr. Grimsley testified that Part Lot 8 is not a buildable lot because the lot size is substandard for the zone and that it is only 29½ feet wide. Mr. Grimsley testified that the subject property can not meet the current development standards because of its size, but that the lot is a buildable lot because it was originally platted prior to 1958. See Exhibit 13 [1956 Laws of Montgomery County 1956].
5. Mr. Grimsley testified that in consultation with the Department of Permitting Services (DPS), DPS determined that the subject property was a buildable lot under the 1956 Zoning Ordinance standards. Mr. Grimsley testified that subject property is 22½ feet in depth and that the dwelling that is proposed would be 27.4 feet in depth. Mr. Grimsley testified that the subject property is a shallow lot, which is a result of being corner lot and having a depth of 62½ feet from east to west. Mr. Grimsley testified that the application of the required setbacks to the property results in a very shallow buildable depth of 22½ feet from east to west.
6. Mr. Grimsley testified that the properties south and southwest of the subject property, Lots 10 through 14, are 100 feet in depth and that most of the other properties in the immediate neighborhood were developed under R-200 zoning standards. Mr. Grimsley testified that the zoning vicinity maps shows a small pocket of lots north of the subject property along Muncaster Mill Road that were developed under the R-200 development standards. Mr. Grimsley testified that the map is error and that this was confirmed by M-NCCPC and that lots were developed under the R-60 standards.

FINDINGS OF THE BOARD

Based upon the petitioners binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 while the lot may be shallow as a result of being a corner lot, any “uniqueness” or “peculiarity” caused by such shallowness does not constitute “conditions peculiar to a specific parcel of property” of such a severity that the Board may grant the requested variance. The Board notes that the property is rectangular in shape, meets the minimum lot size for the zone that would have applied at the time of its development, and that the lot was determined to be buildable under 1956 Zoning Ordinance standards.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of five (5) feet from the required thirty (30) foot streetline setback and/or of ten (10) feet from the required ten (10) foot side lot line setback for the construction of a new single-family dwelling are denied.

The Board adopted the following Resolution:

On a motion to grant by Wendell M. Holloway, seconded by Caryn L. Hines, and in opposition by Donna L. Barron and Allison Ishihara Fultz, the motion failed for lack of a majority. On a motion to deny by Allison Ishihara Fultz, Chair, seconded by Donna L. Barron, in opposition by Wendell M. Holloway and Caryn L. Hines, the motion failed for lack of a majority:

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 22nd day of February, 2007.

Katherine Freeman
Executive Director

NOTE:

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.