

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. A-6467**

**PETITION OF ROLAND BACKHAUS AND AVERY ROSELLE**

OPINION OF THE BOARD

(Public Hearing Dates: June 10, 2015, and June 24, 2015)  
(Effective Date of Opinion: July 16, 2015)

Case No. A-6467 is an application for a 13.17-foot variance from the 40-foot side street setback required by Section 59.4.4.7.B.2.a of the Montgomery County Zoning Ordinance. The Applicants propose to build a new single family dwelling.

The Board of Appeals held a public hearing on the application on June 10, 2015 and June 24, 2015. Heather Dishopolsky, Esquire and Steven Z. Kaufman, Esquire appeared on behalf of the Applicants, Roland Backhaus and Avery Roselle. Roland Backhaus, David Neumann, an architect, Eric Stanley, an architect, and Lawrence Williams, an abutting neighbor, testified in support of the application.

Decision of the Board: Variance Denied.

**EVIDENCE PRESENTED**

1. The subject property is Lot 1, Block 2, containing 19,691 square feet, Bannockburn Subdivision located at 7059 Wilson Lane, Bethesda, Maryland, 20817, in the R-200 Zone. The property is located at the corner of Wilson Lane and Broxburn Drive. The property is a rectangular lot, with the Broxburn Drive, or side street, frontage and its parallel lot line as the longer sides of the rectangle.
2. The Applicants propose to demolish the existing home on their property and construct a new home, maintaining the existing 60.3-foot setback from Wilson Lane. They request a 13.17-foot variance from the required 40-foot side street setback from Broxburn Drive. The property also has a rear setback requirement of 30 feet and a side setback to the east of 12 feet.

3. The Applicants began the process of obtaining their building permit in the summer of 2014. In discussions with the Department of Permitting Services in July, 2014, about the required setbacks for the property, DPS confirmed a new house could be constructed to the 26.6-foot existing setback along Broxburn Drive. However, when they submitted their building permit application in March, 2015, they learned that under the revised County Zoning Ordinance, effective October 30, 2014, the required side street setback is 40 feet. [Exhibit No. 3, page 3, Transcript, June 10, 2015, p. 6.].

4. Applicants contend that their property was never platted or designed to accommodate a 40-foot side street setback. They state that with a 192-foot length along Broxburn Drive and a 107-foot width along its rear lot line, abutting 6505 Broxburn Drive, the lot cannot accommodate both construction of a "feasible, well-designed single-family home and a 40-foot side street setback." [Exhibit No. 3, p. 4].

5. Applicants note that compliance with the 40-foot setback would necessitate locating the house 13 feet to the northeast, much closer to the neighboring house at 7055 Wilson Lane, which itself, is just six feet from the shared property line. In addition, the Applicants fear that this shift would impinge on the roots of a specimen size tree. Because the rear yard has frontage on Broxburn Drive, shifting the house would also result in the loss of most of the rear yard area furthest from the street and most private and safe as a play area. [Exhibit No. 3, Transcript, June 10, 2015, p. 40-41].

6. In their Statement [Exhibit No. 3], and in Mr. Backhaus' and Mr. Neumann's testimony, the Applicants assert that compliance with the 40-foot side street setback would not be consistent with the traditional development pattern of the neighborhood. David Neumann testified as an expert in architecture. Mr. Neumann stated that the lot is roughly rectangular, measuring 192.37 feet on its northeast boundary, approximately 98 feet across the front and 107.8 feet at the rear. Mr. Neumann stated that the proposed placement of the house on the lot is "predicated on maintaining a pattern of spacing of the houses that currently exist along Wilson Lane," to preserve trees of 30 inches in diameter or greater, including a 32 inch poplar and a 32 inch walnut, and to "maintain separation between the houses for privacy between themselves and their neighbors." [Transcript, pp. 17-18]. Mr. Neumann stated that the houses along Wilson Lane "adhere to this pattern that was established when these houses were constructed in the 1930s that these houses are separated by a generous margin. And so part of our objective in again placing this house is to honor this pattern that exists in this neighborhood..." [Transcript, p. 22].

7. Mr. Neumann stated that placement of the house on the subject property "was sort of anticipating a setback that was probably 25 feet or something about like that one." He noted that the lots along Broxburn Drive are 200 feet deep by approximately 100 feet wide and said, "It's when we take this property and you know

we give it two fronts that we end up having an extreme condition for the ... proper placement of the house." [Transcript, p. 24]. He stated that the proximity of the neighboring house to the northeast along Wilson Lane is an extraordinary situation for the subject property and "an undesirable condition for privacy to both parties." [Transcript, p. 27]. Mr. Neumann stated that compliance with the 40-foot side street setback from Broxburn Drive would necessitate locating the house with a small terrace off the kitchen "touching the 12-foot setback." [Transcript, p. 25].

8. Mr. Neumann opined that because the "lot is almost twice as long as it is wide creates a lot that is restrictive of placing a house ... that fits the historic character, the old character of the neighborhood." [Transcript, p. 27].

9. Mr. Neumann stated that the requested variance is the minimum reasonably necessary because the 19,900 square-foot subject property can accommodate approximately 4000 square feet of lot coverage, but that the proposed house would comprise 2300 square feet.

10. Mr. Neumann cited the Master Plan goal "to perpetuate and enhance the quality of life," and gave his opinion that the proposed location of the house, intended to maintain privacy for the subject property and the neighbors to the northeast, hews to the Master Plan goals. [Transcript, p. 32].

11. In response to Board questions, Mr. Neumann conceded that the proposed house can be located within the required setbacks on the lot, with the loss of several trees, and of privacy between the subject property and the neighbor to the northeast. [Transcript, pp. 33-35].

12. Roland Backhaus testified that the backyard was important to the Applicants in purchasing the subject property and in designing the new house. He stated, "We wanted to build a home with a relatively small footprint, so that we could maintain as much yard as we possibly could." [Transcript, p. 37]. He stated that they have discussed their plans with their neighbors at length.

13. Mr. Backhaus stated that the Applicants wish to keep the wall of the house along Broxburn Drive in the same location that the wall was placed when the existing house was built in the 1930s, and that the new design actually only extends the house about four feet off the end of the current house, but that a requirement to place the house 13 feet closer to the abutting property to the northeast degrades the privacy of the back yard that they sought because that area would be exposed to traffic and onlookers from both Wilson Lane and Broxburn Drive.

14. Mr. Backhaus stated that locating the house closer to 7055 Wilson Lane would change the established pattern of spacing between the houses, costing "the appeal that goes with that." [Transcript, p. 44]. Mr. Backhaus measured the distances between the houses on the nine lots on his block of Wilson Lane. He entered Exhibit 24 into the record to illustrate these measurements. The longest

distance between two houses is 111', between 7045 and 7039 Wilson Lane, because there is a vacant lot between them. The shortest distance is 29'3", between the houses at 7039 Wilson Lane and 7035 Wilson Lane. Mr. Backhaus calculated an average distance between the houses of 45'10". He also calculated an average distance, excluding both the largest and smallest distance, of 36'1. In response to a Board question, Eric Stanley testified that the average spacing between the nine houses in Exhibit 24, not counting the 111-foot distance between 7045 and 7039, is 35' ½".

15. The current distance between Mr. Backhaus's home and the abutting neighbors to the northeast is 41'6"; the proposed distance between the two houses, with a variance, is 42'10". The distance between Mr. Backhaus's house and 7055 Wilson Lane if a variance is not granted for the new house, would be 29'4".

16. Mr. Backhaus also testified that his house and the house across from his, at 6500 Broxburn Drive, "form sort of a gateway... to the Bannockburn Heights neighborhood," and that they are located 42'3" and 41'6" from their respective curbs, but that without the requested variance, his house would be 55 feet from the curb, changing their symmetrical appearance by about 30 percent. [Transcript, June 24, 2015, p. 18].

17. In response to questions, Mr. Backhaus stated that his rectangular lot is distinguished from others around it by being subject to a 40-foot side street setback, rather than the 12-foot side setback applicable to other rectangular lots. He pointed out, in Exhibit No. 25, how the combination of the proportions and orientation of his lot with the required setbacks necessitates locating the house much closer to the side lot line than if the lot were more regularly proportioned.

18. Lawrence Williams testified that his house is very close to the property line shared with the subject property. He expressed concern that construction of Mr. Backhaus's house close to the property line, compromising the tulip poplar in that area could be a risk for his house. He expressed concern that locating the Backhaus/Roselle house close to the property line would reduce the privacy between the two homes, and would detract from their curb appeal.

## **FINDINGS OF THE BOARD**

*Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

1. *Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds that the subject property contains no unique or extraordinary condition. It is a generously sized, rectangular, corner lot. The Board acknowledges

that construction on the lot is impacted by the side street setback requirements, but notes that this condition does not preclude construction of the proposed house on the lot within the setbacks.

2. *Section 59.7.3.2.E.2.a.iii the proposed development contains environmentally sensitive features or buffers;*

The Board finds that there is no environmentally sensitive feature or buffer on this property. The subject property is not subject to any statutory tree protection, so while there may be specimen size trees on the property, there is no legal requirement to protect them.

3. *Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds that the request to construct the house 42'10" from the house on the abutting property at 7055 Wilson Lane does not conform with the established historic or traditional development pattern of the street. Exhibit No. 24, and Mr. Backhaus's testimony establish that the distance between the houses at 7039 Wilson Lane and 7035 Wilson Lane is 29'3". Without a variance, the Backhaus/Roselle house will be 29'4" from the house at 7055 Wilson Lane. Mr. Stanley testified that the average spacing between the nine houses in Exhibit 24, not counting the 111-foot distance between 7045 and 7039, is 35' ½". The Board finds that the not quite six-foot difference between this average and the distance between the Backhaus/Roselle house and 7055 Wilson Lane does not disrupt an established development pattern on the street. If the variance were granted, the subject property would have the widest separation from an adjoining property of any on the block, not counting the 111' distance between 7045 and 7039.

4. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds based on both Mr. Neumann's and Mr. Backhaus's testimony, that the proposed house can be constructed on the lot, in compliance with the applicable setbacks. Thus, the setback constraints do not pose a practical difficulty for the Applicants in using their property. The Board further finds that the requested variance of 13.17 feet, to create a distance of 42'10" from the neighboring home, where the average distance on the block is 35 or 36 feet, is more than the minimum reasonably necessary.

5. Because the application does not meet the requirements of Sections 59.7.3.2.E.a and 59.7.3.2.E.2.c, the variance must be denied.

On a motion by Carolyn J. Shawaker, Vice-Chair, seconded by Stanley B. Boyd, with John H. Pentecost, Edwin S. Rosado, and David K. Perdue, Chair, in agreement, the Board adopted the following Resolution:

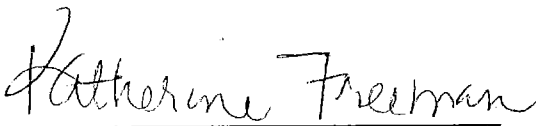
**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



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David K. Perdue  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 16<sup>th</sup> day of July, 2016.



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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.