

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

CASE NO. A-6506

PETITION OF MICHAEL STEIN

OPINION OF THE BOARD

(Opinion Adopted December 7, 2016)

(Effective Date of Opinion: December 16, 2016)

Case No. A-6506 is an application for a variance to allow the construction of a driveway which would increase the surfaced parking area between the lot line and the front or side street building line of the subject property to 40.5%. The maximum surfaced parking area on this part of a lot in the R-60 zone is the greater of 35% or 320 square feet, in accordance with Section 59-6.2.5.M.2.b of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on December 7, 2016. Petitioner Michael Stein and his architect, Jennifer Verbeke, AIA, appeared and testified in support of the request.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 19, Block 2 0018 Subdivision, located at 4212 Maple Terrace, Chevy Chase, Maryland, 20815, in the RE-60 Zone. Per SDAT, the Petitioner has owned this property since 2002.
2. The subject property is a pie-shaped lot located on a cul-de-sac. It is 28.95 feet wide at the front property line. Ms. Verbeke testified that this frontage is extremely narrow, stating that this property has the narrowest street frontage on Maple Terrace. In addition, the property's side yard on the driveway side of the house is only a seven and a half feet wide, which is not wide enough to extend the driveway around the house to allow parking in the side or rear yards. See Exhibits 3, 4, 5(f) and 8.
3. The subject property contains a home with a basement level garage. It was constructed in 1969. The garage, which is original to the house, is accessed by a steeply sloped driveway that has retaining walls on both sides. See Exhibit 3. Ms. Verbeke

testified that the slope of the Petitioner's driveway is greater than 18%. Petitioner's Justification Statement notes that "[f]or reference the Montgomery County Department of Transportation calls out that a new residential driveway should have a recommended slope of 10% maximum. (Per Standard No. MC_301.01) The maximum handicap accessible slope is 1:12 or approximately 8.33 percent." See Exhibit 3.

4. Ms. Verbeke testified that because of the steep slope of Petitioner's driveway, it is very difficult to maneuver a car in and out, and that you have to walk up the driveway to the front steps to access the home. She testified that Petitioner is seeking to use the existing topography to add a parking pad with an approximate 3.5% grade. She testified that no permit or new curb cut is necessary for this construction, but that zoning relief [from the surfaced parking area maximum] is needed.

Ms. Verbeke testified that the proposed parking pad will be shielded from view by an existing Japanese maple which is located next to the driveway. She further testified that that Japanese maple tree is protected by the Town of Chevy Chase.

5. Mr. Stein testified that his home is the only home on Maple Terrace that has a garage, explaining that parking for the other properties is on parking pads. Mr. Stein testified that his driveway is unusable for parking because it is so steeply sloped. He testified that he is not comfortable leaving a car on the driveway, even with the emergency brake on, and that when it snows he is required to remove his car(s) from the street to allow for plowing.

6. The Justification Statement states that if this lot had a conventional (rectangular) shape, no variance would be needed for the construction of this parking pad because the combined paving of the driveway and parking pad would not exceed the 35% limit. See Exhibit 3.

7. The record contains seven letters of support from neighbors (six from neighbors on Maple Terrace, one from a neighbor on Maple Avenue). All of the letters state that the proposed construction will not have a negative impact on the neighborhood, and all note that it will "greatly improve the parking situation on our cul-de-sac." See Exhibit 10(a)-(g).

CONCLUSIONS OF LAW

Based on the binding testimony of Ms. Verbeke and Mr. Stein, 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 59-7.3.2.E, as follows:

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

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 is pie-shaped, and as a result, has exceptionally narrow frontage on Maple Terrace. See Exhibits 3 and 4. Indeed, per the testimony of Ms. Verbeke and the exhibits of record, the Board finds that this property has the smallest frontage of all of the properties on Maple Terrace. In addition, the Board finds that the width of the property at the house is such that vehicles could not drive around the house on the driveway side to access the back yard.¹ The Board finds that this exceptional narrowness is peculiar to the subject property. The Board finds that the unusually narrow frontage of this property, coupled with its pie shape, results in an abnormally small front yard, and consequently in an unusually restrictive amount of surfaced parking area allowed relative to the size of this lot.

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, based on the testimony of the Petitioner, that parking for other properties on Maple Terrace is on parking pads, and thus the Board finds that the addition of a parking pad at the subject property conforms with the established historic or traditional development pattern of this street.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner purchased this property in 2002, after the house, garage, and existing driveway were built, and is not responsible for the steep slope of the driveway, the configuration of the lot, or the resultant constrained surfaced parking area. See Exhibit 3 and SDAT printout.

3. *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 that the unusually constrained area for surfaced parking in the front of this property, resulting from its unusual shape, creates a practical difficulty for the Petitioners in that it is difficult to park vehicles on their existing driveway, due to its extreme 18.2% slope, and they are unable, because of the Zoning Ordinance, to increase the paved area to the extent needed to create a level parking surface. The Board further finds that the addition of this parking pad would alleviate this difficulty and would conform to the established historic or traditional development pattern on this street, and that the variance requested is the minimum necessary to allow the proposed construction.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the grant of this variance will continue the residential use of this home, consistent with goals of the applicable Master Plan.

¹ The Board notes that driving around the other side of the house, to the extent that that might be possible, would entail more paving in the front yard than the construction of the requested parking pad, and hence would still require a variance.

5. Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.


The Board finds that granting this variance will not be adverse to the use and enjoyment of abutting and confronting properties, as demonstrated by the letters of support received, all of which state that the proposed construction will not have a negative impact on the neighborhood, and will "greatly improve the parking situation on our cul-de-sac." See Exhibit 10(a)-(g).

Accordingly, the requested variance to allow an increase in the surfaced parking area between the lot line and the front or side street building line of the subject property to 40.5% is **granted**, subject to the following condition:

1. Petitioner shall be bound by his testimony and exhibits of record, and by the testimony of Ms. Verbeke.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice-Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce A. Goldensohn in agreement:

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.



Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of December, 2016.



Barbara Jay
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. 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.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.