

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6565**

**PETITION OF CRAIG AND KAREN HOLCOMB**

**OPINION OF THE BOARD**  
(Opinion Adopted May 30, 2018)  
(Effective Date of Opinion: June 8, 2018)

Case No. A-6565 is an application for a variance of 24.45 feet from the 100.45 foot front lot line setback (established building line) required by Section 59-4.4.7.B.2 of the Zoning Ordinance. The Petitioners seek the variance to allow the construction of a new single-family dwelling on the subject property.

The Board of Appeals held a hearing on the application on May 30, 2018. Petitioner Craig Holcomb, who owns the subject property, appeared at the hearing in support of the variance with his attorney, Benjamin Peters, Esquire. In addition, Gregory Phillips, the Petitioner's real estate agent, and Hank Kodan, a representative from Caruso Homes, were also in attendance, along with engineer Dave McKee.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 15, Block B, Briars Acres Subdivision, located at 4121 Briars Road, Olney, MD, 20832 in the R-200 Zone. It is located on the northwest corner of the intersection of Maryland Route 108 (Olney-Laytonsville Road) and Briars Road.
2. In their "Application Requesting Variance" (hereinafter "Statement"), the Petitioners indicate that they purchased this property in October 2017. They indicate that it was one of four buildable lots "created pursuant to the Resolution of the Montgomery County Planning Board dated September 17, 2009 approving the Preliminary Plan No. 120090150 subdividing 2.34 acres into the said four (4) lots." See Exhibit 3. In addition to showing the buildable area on the subject

property, Attachment "E" to Exhibit 3 also shows the relative shapes of the four lots created by this subdivision, and reveals that the subject property is much less deep than abutting Lot 16 and Lot 17, which also border Maryland Route 108. This Attachment also shows that the depth of the subject property along Briars Road is similar to that of Lot 14, which abuts the subject property along that road.

3. The Petitioners' Statement notes that "a 35-foot wide 'tree-save area' was created adjacent to MD Route 108 from Lots 15, 16 & 17 in order to act [as] a buffer/barrier with MD Route 108 and the said Lots." See Exhibit 3.
4. The Petitioners' Statement indicates that at the time of purchase, the setback for the subject property along Briars Road was 40 feet, which was the approximate setback for Lot 14, and the setback along Maryland Route 108 was undetermined; neither road had an established building line ("EBL"). Their Statement proceeds to explain the order in which the four properties were developed, how the established building line along Maryland Route 108 came into existence subsequent to the Petitioners' purchase of the subject property in October 2017, and how that EBL precludes development of their property, as follows:

At the time of purchase (October 6, 2017), the setoff for Lot 15 along Briars Road was 40 feet, which was the approximate setoff for Lot 14. An Established Building Line (EBL) pursuant to Montgomery County Code Section 59.4.4.1(A) *et seq.* along Briars Road was not established because, even though there were two detached houses within 300 feet along Briars Road, (4201 Briars Road and 4125 Briars Road) the house located at 4201 Briars Road was built in 1957 and the existing sewer along Briars Road was not installed under 1972, therefore the house at 4201 Briars Road is excluded from EBL determination because it was at one time served by septic. Thus the EBL is not established because there is only one house to make the said determination and Montgomery County Code Section 59.4.4.1(A) *et seq.* requires "2 or more detached houses" to determine the EBL.

Likewise, **at the time of purchase (October 6, 2017)** the setoff for Lot 15 along MD Route 108 was undetermined because the EBL had not been established because there was only one house (Lot 17, 4133 Briars Road) within 300 feet to MD Route 108.

However, Caruso Homes began building the single-family house on Lot 16 on or about December 23, 2017, thus for the purposes of the Montgomery County Code Section 59.4.4.1(A) *et seq.*, the construction created a second house along MD Route 108 allowing an EBL to be established.

Because of the way in which the property was subdivided the house on Lot 17 is setoff from MD Route 108 by 93.4 feet and the house on Lot 16 is setoff from MD Route 108 by 107.5 feet, creating an EBL of 100.45 feet for Lot 15. The EBL of 100.45 feet for Lot 15 leaves only a small triangle section in the northwest corner of the property as developable. Attached

herein is a copy of a scaled drawing showing the developable section (*highlighted*) of Lot 15 as "Exhibit E".

The EBL established on or about December 23, 2017 makes Lot 15 undevelopable with no reasonable use for the property unless a variance is granted.

The developable property of Lot 15 as created by the EBL is exceptionally narrow and the shape is unusual such that no house can be built on Lot 15.

See Exhibit 3. Attachment E to Exhibit 3 shows the resultant buildable envelope on Lot 15, which could best be described as a small right triangle, the height of which is approximately two and one half times the length of its base (i.e. a tall, narrow right triangle).

5. The Petitioners' Statement goes on to note that the creation of the EBL and the constraints it poses on the buildable envelope for Lot 15 were not due to any action by the Petitioners, that the variance requested is the minimum necessary to allow development of this property (noting that if construction on this property had started before construction on Lot 16, the EBL would have been different), that the variance can be granted without substantial impairment to the applicable master plan, and that the requested variance can be granted without adversely affecting neighboring properties. See Exhibit 3.
6. At the hearing, Petitioner Craig Holcomb recounted the development history of the subject property. He testified that of the four lots created in 2009, Lot 14 was the first to be developed, followed by Lot 17 in 2016. He testified that in 2017, Lots 15 and 16 were packaged for sale and development by Caruso Homes, that Lot 16 was sold on September 1, 2017, and that he and his wife had purchased Lot 15 on October 6, 2017. He testified that at the time of purchase, there was no EBL along Maryland Route 108 because there were not two eligible houses within 300 feet. He stated that on December 23, 2017, development was started on Lot 16, creating a 100-foot established building line along Maryland Route 108 that "cut off our entire ability to develop Lot 15." The Petitioner testified that the creation of this EBL resulted in approximately 80 percent of Lot 15 being cut off, leaving only a small triangle as developable. He stated that ironically, if development on Lot 15 had started before development on Lot 16, the resultant EBL would have allowed construction on Lot 16.
7. The Petitioner testified that he was seeking relief under Section 59-7.3.2.E.1 of the Zoning Ordinance, since he testified that there is no way that Lot 15 can be developed without the grant of a variance and therefore there would be no reasonable use of the property if the variance were denied. Alternatively, he testified that a variance could be granted under Section 59-7.3.2.E.2 of the Zoning Ordinance, testifying (i) that the exceptional narrowness or shallowness of this property left an undevelopable buildable envelope after application of the setbacks; (ii) that at the time of purchase, the property was developable and intended for

development per the 2009 Resolution; (iii) that he and his wife did not anticipate and took no action to cause the EBL along Maryland Route 108; and (iv) that the grant of the variance would no adversely impact neighboring properties.

8. In response to a Board question asking if Lots 16 and 17 front on Maryland Route 108, the Petitioner stated that they do, but that they are addressed on Briars Road. He went on to state that the only access to those properties is from Briars Road, and that part of Lot 15 had been taken to create a right of way for all four lots.
9. Hank Kodan of Caruso Homes testified that a six-foot sound barrier had been created by the developer along Maryland Route 108. He testified that the width of the home planned for Lot 15 had been reduced, and that the home, once constructed, would face Briars Road and match the setback of the home on Lot 14.

## CONCLUSIONS OF LAW

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 59-7.3.2.E, "Necessary Findings," as follows:

1. Section 59-7.3.2.E.1 of the Montgomery County Zoning Ordinance provides that a variance can be granted if "denying the variance would result in no reasonable use of the property." The Board finds, pursuant to the Statement submitted by the Petitioners and excerpted herein, that the application of the 100.45 foot EBL along Maryland Route 108 to the subject property results in an unusually shaped (triangular) and narrow buildable envelope which precludes construction of a home on this property, frustrating the very purpose for which the property was subdivided and purchased, and leaving the Petitioners with no reasonable use of their property. The Board further finds that the 24.45 foot variance requested by the Petitioners, which would allow them to site their house within 76.00 feet of the front lot line, is necessary to allow reasonable use of this property. Thus the Board finds that the requested variance can be granted pursuant to Section 59-7.3.1.E.1 of the Zoning Ordinance.

2. Alternatively, based on the evidence of record, the Board finds that the variance can be granted under Section 59-7.3.2.E.2 of the Zoning Ordinance, since the request also complies with the applicable standards and requirements set forth in that Section, as follows:

*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 Petitioners purchased the subject property less than a year ago, and that at the time of their purchase, there was no established building line along Maryland Route 108. The Board further finds that due to the relative shallowness of Lot 15 when compared with Lots 16 and 17, which are significantly deeper than the subject property, the application of the subsequently-established EBL of 100.45 feet along Maryland Route 108 results in an unusually shaped and extremely constrained buildable envelope on Lot 15, such that a home could not be constructed on the subject property without variance relief. The Board finds that this is an exceptional condition peculiar to this property. See Exhibit 3.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the establishment of an EBL along Maryland Route 108, which in turn constrains the buildable envelope for the subject property, is not the result of any actions by the Petitioners.

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, based on the testimony of the Petitioner and that of Mr. Kodan, and on the Statement in the record at Exhibit 3, that the requested variance is the minimum necessary to allow the proposed development of this property, which has been scaled back from earlier proposals, and thus the minimum necessary to overcome the difficulties that full compliance with the Zoning Ordinance would impose.

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 proposed construction will continue the residential use of this property anticipated by its 2009 subdivision, without substantial impairment to the intent and integrity of the Olney Master Plan.

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 the grant of this variance will allow the residential use of this property anticipated by the 2009 subdivision, and thus will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes that even with the grant of this variance, the proposed construction will still be setback over 75 feet from Maryland Route 108. The Board further notes that there is a 35-foot tree-save area and a six-foot sound barrier that buffer the subject property from Maryland Route 108.

Accordingly, the requested variance is **granted**, subject to the following condition:

1. Petitioners shall be bound by the testimony and exhibits of record.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Edwin S. Rosado, Vice Chair, with Stanley B. Boyd, Bruce Goldensohn, and Katherine Freeman 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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John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 8th day of June, 2018.

  
\_\_\_\_\_  
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.