

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6589

PETITION OF PAUL BAINES

OPINION OF THE BOARD

(Public Hearing Date: November 7, 2018)
(Effective Date of Opinion: November 15, 2018)

Case No. A-6589 is an application by Paul Baines for a 0.50 foot variance from the twenty-five (25) foot front lot line setback required by Section 59-4.4.9.B.2 of the Montgomery County Zoning Ordinance. The variance is sought for the construction of a new single family dwelling.

The Board of Appeals held a public hearing on the application on November 7, 2018. Petitioner Paul Baines, the property owner, testified in support of the variance.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 7, Block A, Homewood Subdivision, located at 3324 Pliers Mill Road, Kensington, MD, 20895, in the R-60 Zone. It is a rectangular lot, 7,200 square feet in size, with "steep slopes of over 20% throughout much of the buildable area." See Exhibits 3, 4, and 5(g).

2. The Petitioner submitted a cover letter and Justification Statement in support of the variance. See Exhibit 3. His cover letter notes that the property was purchased with the intent to construct a single family dwelling, that construction began, and that "at the wall check inspection it was discovered that the front right (when looking from the street) corner of the house was 6 inches over the 25 ft front setback line." The cover letter goes on to express the Petitioner's belief that the "6 inch encroachment is imperceptible to the human eye and causes no impact whatsoever," and to note that "all other adjacent houses on the street are also 6 inches encroaching on the 25 ft front setback." The Petitioner attaches an established building line survey in support of this conclusion. See Exhibit

7(c). Finally, the Petitioner's cover letter notes that grant of the requested variance "will not be a detriment, but rather a benefit to the use, enjoyment, and property values of adjoining or neighboring properties because it brings the house in line with the others on the street and it preserves, as much as possible, the back yard forest that helps filter water for stream quality and that all the neighbors enjoy for the view." See Exhibit 3.

3. The Justification Statement states that the Petitioner purchased that subject property in 2017, and intended to build a new single family dwelling with a footprint of 24' x 32'. It notes that all applicable permits were issued, and that all inspections were passed up to the framing. The six (6) inch encroachment of the right front corner was discovered during the wall check survey. See Exhibit 3.

4. The Justification Statement asserts that denying the variance would result in no reasonable use of the property under Section 59-7.3.2.E.1 of the Zoning Ordinance, as follows:

The property is zoned for residential use and no other uses are reasonable given its proximity to other residential properties and its current taxable value. This one and only use is reinforced by the fact that a half built, fully permitted house with utility connections already sits on the site. Denying the variance would deprive the property of this reasonable use and, furthermore, would result in a detrimental situation where a half built eyesore would have adverse effects on abutting and confronting properties. Any suggestion of moving the building must be dismissed as impractical, structurally implausible, dangerous, and altogether detrimental and unreasonable.

See Exhibit 3.

5. The Justification Statement further asserts that the subject property also meets the criteria for the grant of a variance under Section 59-7.3.2.E.2 of the Zoning Ordinance. It states in reference to Section 59-7.3.2.E.2.a.i that "the subject property exhibits steep slopes of over 20% on most of the buildable area...." With respect to Section 59-7.3.2.E.2.a.v, the Justification Statement notes that:

The position of the house actually brings it closer to the established building line of 22.2 ft. See ebl survey. By encroaching on the current code 6 inches, the house now conforms *more* with the established pattern, although the 6" is imperceptible to the human eye, so it could be argued that there is no difference."

With respect to Section 59-7.3.2.E.2.b of the Zoning Ordinance, the special circumstances or conditions are not the result of actions by the applicant, the Justification Statement notes that:

The special circumstances are a result of difficulty in measuring and excavating on steep slopes and the slope-specific way in which the foundation was poured. The

foundation was done in one monolithic pour which made it impossible to check measurements between pours as with normal concrete foundation techniques.

The Justification Statement goes on to state that the requested variance is two percent (2%) of the overall front lot line setback, and is the minimum needed to continue building the house. It states that the grant of the variance will not impair the general or master plan, noting that the house was fully permitted. Finally, the Justification Statement states that granting this variance will not be adverse to the use and enjoyment of abutting or confronting properties since "it has no noticeable effect without the use of gps guided survey equipment," and asserts that it will actually improve the use, enjoyment, and property values of neighboring properties by allowing completion of the existing construction. See Exhibit 3.

6. At the hearing, the Petitioner testified that the subject property is severely sloped, falling a full story from the front to the rear of the house, and then continuing to fall in a downward direction. He testified that the severity of this slope caused him difficulties in transferring measurements, and that the six (6) inch variance needed is minimal, constituting only two (2) percent of the required setback. He further testified that this six (6) inch difference in the setback of this house is imperceptible from the street at any angle, and that at its current setback, the façade of the house lines up with others on the street, which he testified are all set back less than 25 feet from the front lot line.

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 59-7.3.2.E.2, 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 unique in that it has steep slopes of over 20% on most of the buildable area. See Exhibit 3. The Board finds that this is an exceptional topographical condition peculiar to this property, and accordingly finds that the property satisfies this element of the variance test.

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 established building line survey submitted with this application and on the assertions made in the Justification Statement and at the hearing, that if the requested front lot line variance were granted, the setback of the proposed

construction would conform to that of neighboring properties, and thus would substantially conform with the established historic or traditional development pattern of this street. See Exhibits 3 and 7(c).

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

The Justification Statement indicates that the Petitioner purchased the property in 2017. There is nothing in the record to suggest or indicate that the steep slope of the subject property or the placement of neighboring properties in front of the 25 foot front setback line, such that they create an established building line of 22.2 feet, is attributable to the Petitioner. Thus the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioner.

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 application of the required front lot line setback to this property constitutes a practical difficulty for the Petitioners in that it precludes construction that comports with the established or traditional development pattern of this street, as evidenced by the established building line survey in the record at Exhibit 7(c). The Board further finds that the requested six (6) inch variance is the minimum necessary to allow this construction to proceed and thus to overcome the practical difficulties that full compliance would impose. Thus the Board concludes that the requested variance is the minimum necessary to overcome the practical difficulties created by the unusual or extraordinary situations or conditions on this property.

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;*

The Board finds that the requested variance needed for the construction of a single family dwelling can be granted without substantial impairment to the intent and integrity of the Kensington-Wheaton Master Plan, which seeks, among other things, to "maintain the well established low- to medium-density residential character which prevails over most of the planning area."

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 the requested six (6) inch variance, and thereby allowing the construction of the proposed dwelling to continue to its completion, will not bring this house any closer to Plyers Mill Road than its neighbors. Thus the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties. See Exhibits 3 and 7(c).

Accordingly, the requested variance of six (6) inches from the front lot line setback is **granted**, subject to the following conditions:

1. The Petitioner shall be bound by the testimony and exhibits of record; and

2. Construction shall be in accordance with the plans in the record at Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Bruce Goldensohn, with John H. Pentecost, Chair, and Edwin S. Rosado, Vice Chair, in agreement, and with Katherine Freeman not 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.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of November, 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.