

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6658
PETITION OF XINGZHU LIU**

OPINION OF THE BOARD
(Hearing Held: July 8, 2020)
(Effective Date of Opinion: July 15, 2020)

Case No. A-6658 is an application by Xingzhu Liu (the “Petitioner”) for a variance of eight (8) feet needed to allow the location of the proposed construction, a new house, within seven (7) feet of the sidestreet lot line. The required setback is fifteen (15) feet, in accordance with Section 59-4.4.9.B.1 of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, July 8, 2020. All participation was done via Microsoft Teams. Petitioner Xingzhu Liu participated in the hearing, in support of the application.

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

EVIDENCE PRESENTED

1. The subject property is Lot 7, Block 11, Glenmont Village Subdivision, located at 12501 Holdridge Road, Silver Spring, Maryland, 20906, in the R-60 Zone. It was recorded in 1950. See Exhibit 1.
2. The subject property (“property”) has an area of 6,404 square feet, in a neighborhood where lots range from 6,000 to 8,000 square feet. The subject property is roughly triangular in shape, narrowing significantly until it comes to a point as it extends away from Holdridge Road. The Zoning Vicinity Map shows that most of the lots in the neighborhood are rectangular in shape. See Exhibits 3 and 6(b).
3. The property is bordered on the southwest side by Holdridge Road, and on the southeast side by a side lot line that is shared with Lot 6, and that meets Holdridge Road at a right angle. The northern side of the subject property is bordered by an unbuilt 30-foot wide right-of-way (“paper street”) that extends from Holdridge Road along most of the property’s northern border; the remainder abuts a lot line shared with a large parcel

that is owned by the Washington Metropolitan Area Transit Authority. See Exhibits 3, 4(b), and 6(b).

4. Because the Property borders a paper street, that shared lot line is considered for zoning purposes to be a sidestreet lot line, which requires a setback of 15 feet. If the paper street were not present, this would be considered a side lot line, and the required setback would be seven (7) feet. See Exhibit 3.

5. The unnamed, unbuilt paper street abutting the subject property was dedicated for public use in 1935. A letter from the Montgomery County Department of Transportation confirms that the County "has no plans at this time to construct a road within the dedicated area," and notes that there are storm drain pipes under the right-of-way. See Exhibit 8.

6. The Petitioner is seeking to construct a new house. The Justification Statement ("Statement") states that the 15-foot sidestreet setback prevents the construction of reasonably-sized house (1,440 square feet) with a two-car garage on the subject property. The Statement goes on to say that it would make no sense for the County to pave this paper street because it is a dead end, does not go anywhere, and would only serve the Petitioner, concluding that "[b]uilding a street there will benefit no body, will consume public resources and will hurt the ecology of the community." See Exhibit 3.

7. The Statement states that the grant of the requested variance "will not have any negative impacts to the community and will match the setback requirements for other lots in this community." See Exhibit 3.

8. The Petitioner testified at the remote hearing in support of the request variance. He stated that he purchased the subject property about five (5) years ago, and that without the grant of the requested variance, he will not be able to build on the property. The Petitioner testified that he has communicated with the County's Department of Transportation, and that they indicated that they have no plans to build on this right-of-way. The Petitioner testified that the process to get a paper street abandoned takes a long time, and that he wanted to get construction of his "lovely small house" underway. In response to a Board question asking if he would need a variance if the right-of-way were not there, the Petitioner testified that he would not, because the setback would be seven (7) feet instead of 15 feet.

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 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 an unusual triangular shape, narrowing significantly towards the rear, which results in a strangely configured buildable envelope of limited size and utility. The Board finds that the constraints imposed on the buildable envelope by the unusual shape of the property are further compounded by the imposition of a sidewalk setback instead of a side lot line setback on one side of the property for an unbuilt paper street. The Board finds that the combination of these factors constitutes an extraordinary condition, peculiar to this property, in satisfaction of this element of the variance test.

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 Petitioner, who purchased this property approximately five years ago, is not responsible for the property's shape, or for the fact that it abuts an unbuilt paper street that dates back to 1935.

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;*

Based on the Statement and testimony of the Petitioner, the Board finds that the imposition of a sidewalk setback on this property precludes the proposed construction of a modestly-sized home, constituting a practical difficulty, and that the requested variance is the minimum necessary to allow the construction to proceed. Thus the Board finds that the grant of the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail, in satisfaction of this element of the variance test.

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 grant of the requested variance will allow the construction of a new home on the subject property, which is located in a single-family residential neighborhood with residential zoning (R-60). Thus the Board finds that the variance can be granted without substantial impairment to the intent and integrity of the applicable 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.*

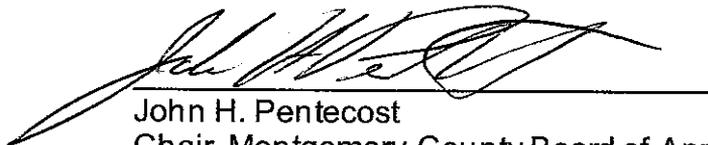
Based on the Statement, the Board finds the proposed construction will not have a negative effect on the community, and thus finds that granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. The Board further notes in support of this that the side of the property for which variance relief is requested abuts an unbuilt paper street, which provides additional buffer, and that the variance relief sought is such that the remaining setback will equal the setback that would have been imposed if a side lot line setback had been required instead of a sidewalk setback.

Accordingly, the requested variance of eight (8) feet from the required 15 foot sidestreet setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record.
2. Construction shall be in accordance with Exhibits 4(a)-(b).

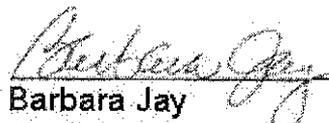
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn, Vice Chair, Mary Gonzales, and Richard Melnick in agreement, the Board adopted the following Resolution:

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 July, 2020.



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.