

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6798

PETITION OF ADAM AND REEMA BRIXIUS

OPINION OF THE BOARD
(Opinion Adopted April 12, 2023)
(Effective Date of Opinion: April 19, 2023)

Case No. A-6798 is an application for variance relief needed in accordance with the proposed construction of a new single-family dwelling. The proposed construction requires a variance of 1.10 feet as it is within 25.00 feet of the front lot line along Tilbury Street. The required setback is 26.10 feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 10.60 feet as it is within 25.00 feet of the front lot line along West Virginia Avenue. The required setback is 35.60 feet, in accordance with Section 59.4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on April 12, 2023. Petitioner Adam Brixius appeared at the hearing in support of the requested variances.

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

EVIDENCE PRESENTED

1. The subject property is Lot 46, Block 10, West Chevy Chase Heights Subdivision, located at 7911 Tilbury Street, Bethesda, Maryland, 20814, in the R-60 Zone. It is a five-sided corner lot, 6,383 square feet in size, that is bordered by Tilbury Street to the west and West Virginia Avenue to the north. The property is generally square in shape "with the NW corner of the parcel cut for Montgomery County storm water infrastructure & sight visibility triangle (SVT)." It is "currently undeveloped and flat in nature." See Exhibit 3.

2. In their Statement of Justification ("Statement"), the Petitioners recount the history of the subject property, generally indicating that the property has existed in its current shape and size since 1977, as follows:

The subject property was initially created on 31st March, 1916 as a part of West Chevy Chase Heights, Plat 186, Lots 1,2, & 3, Block 10 See Exhibit 2, Plat 186. In 1977, Lots 1,2, & 3, Block 10 utilized a resubdivision, Plat 11717 (See Exhibit 3, Plat 11717) and created Lot 41 & Outlot A. On December 12th, 2022 Outlot A, by method of Record Plat, Plat 25927 changed to Lot 46 with an administrative procedure and no change to the property dimensions/boundary.

See Exhibit 3. The Petitioners have included copies of Plat 186, Plat 11717, and Plat 25927, illustrating this history, with their submission. See Exhibits 3(a), 3(b), and 3(e).

3. The Petitioners are seeking to construct a new single-family dwelling on the subject property, which they have owned since 2020. See Exhibit 3 and SDAT printout. They are requesting variance relief to allow them to comply with the 25-foot front lot line setback that is generally applicable in the R-60 Zone instead of the established building line (“EBL”) setbacks that would otherwise pertain to this construction. In support of their request, the Petitioners’ Statement indicates that the subject property is roughly half as deep as the properties that were used to calculate the EBL along West Virginia Avenue (74.4 feet deep versus 130 feet deep). The Statement further indicates that the application of a front lot line setback along three sides of this unusual, five-sided property (i.e. along the west (Tilbury Street), north west (truncated corner), and north (West Virginia Avenue) sides) constrains development of the property and necessitates variance relief from the EBL along Tilbury Street. See Exhibits 3, 3(b), and 3(d).

4. The Statement states that the Petitioners are not responsible for the 1977 subdivision, which established the current five-sided shape of the property and its shallow depth relative to neighboring properties along West Virginia Avenue. See Exhibit 3.

5. The Statement states that “[t]he requested variances are the minimum necessary to overcome practical difficulties that full compliance with chapter 59 would impose on the proposed development,” and that proposed development “follows the traditional development pattern of the neighborhood.” The Statement states that the proposed construction includes a total of four (4) off-street parking spaces, suggesting as a result that the proposed new dwelling would not contribute to the already crowded parking conditions on West Virginia Avenue,¹ which the Statement indicates are due to “the number of on street parking permits issued by East Bethesda Community Association (EBCA)” and “the overflow from the new, intense developments to the west in the Bethesda Downtown Overlay District.” See Exhibit 3.

6. The Statement characterizes the subject property as a “corner stone property,” stating that it is “an entry point into the East Bethesda Neighborhood” and is “the edge of the Bethesda Downtown Overlay District.” The Statement indicates that with the exception of park land, a 2017 map amendment changed the zoning of all of the properties on the west side of Tilbury Street between Maple Avenue and Middleton Lane to CR or CRT. See Exhibit 3. The Petitioners submitted an exhibit showing that the

¹ The Statement states that no parking is allowed on Tilbury Street.

property confronting the subject property across Tilbury Street was re-zoned from R-60 to CRT. See Exhibits 5(f) and 3(g). The Statement states that it is "unusual and extraordinary for an R-60 Zone to be inside a Downtown Overlay District and be adjacent to a CR/CRT area at large that is rapidly developing." See Exhibit 3.

7. The Statement states that granting the requested variances will not substantially impair the "intent and integrity of the general plan and the applicable master plan," and furthermore that it will not "be adverse to the use and enjoyment of abutting or confronting properties." See Exhibit 3. The Petitioners include letters of support for the grant of the requested variances from six of their neighbors, and a map showing where these neighbors live relative to the subject property. See Exhibit 3(h). Finally, the Statement states that the proposed construction will "contribute as a transition/buffer from the CRT Zone to R-60 Zone." See Exhibit 3.

8. At the hearing, Petitioner Adam Brixius testified that the subject property has a lot of history: in 1916 it was platted as one of three skinny lots, and in 1977 it was re-platted to convert the three skinny lots into two fatter lots. He testified that, as part of the 1977 resubdivision, a corner of the subject property was taken by the County to create a storm drain, which caused an odd shape for the property. See Exhibit 3(a). Mr. Brixius testified that the EBL requires a 35-foot front lot line setback, and that all other streets in West Chevy Chase Heights have a 25-foot front lot line setback. He testified that the subject property is about half as deep, at 74.4 feet, as the other properties used to establish the EBL, which are approximately 130 feet deep.

In response to questions from the Board, Mr. Brixius testified that he and his wife plan to live at the subject property, which is currently unimproved and has never had a permanent use on it. He testified that his neighbor directly to the west (along with four other neighbors) has been notified of this variance request and has provided a letter of support. See Exhibit 3(h)(iii). Mr. Brixius testified that he owns the property at 7909 Tilbury Street, directly to the south of the subject property, and that that property is smaller and not subject to the EBL. He testified that 7909 Tilbury Street contains a single-family residence with a detached garage, and that he plans to retain ownership of that property and does not plan to tear down the residence because it has had significant improvements.

CONCLUSIONS OF LAW

Based on the binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, "Necessary Findings," 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, based on the Statement, Site Plan, Zoning Vicinity Map, and testimony of record, that the subject property has an unusual five-sided shape, and that it is exceptionally shallow relative to the neighboring properties on West Virginia Avenue, the development of which serves as the basis for one of the EBLs from which the Petitioners are seeking relief. The Board finds that these attributes constitute an exceptional condition peculiar to the property, in satisfaction of this element of the variance test. 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 unusual shape and depth of the subject property is the result of the 1977 subdivision, which predates the Petitioners' 2020 purchase of this property. Thus the Board finds that the special circumstances or conditions are not the result of actions taken by the Petitioners, in satisfaction of this element of the variance test.

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 Statement and testimony of Mr. Brixius, that because the subject property has an unusual five-sided shape and is unusually shallow, the strict application of the EBL setbacks to this property's frontage along Tilbury Street and West Virginia Avenue severely constrains the property's buildable envelope, causing the Petitioners a practical difficulty in their attempt to develop this property. The Board further finds that the requested variances from the application of the EBL, to instead allow proposed construction that meets the 25-foot front lot line setback that would otherwise be required in the R-60 Zone, are the minimum necessary to allow the proposed development, and thus are the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose, 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 the granting of the requested variances will continue the residential use of the property, and thus can be granted without substantial impairment to the intent and integrity of the applicable Bethesda-Chevy Chase Master Plan (1990). Accordingly, the Board finds that this element of the variance test is satisfied.

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 the requested variances will allow the residential use of this property anticipated by the recent subdivision, and thus will not be adverse to the use and enjoyment of abutting or confronting properties, in satisfaction of this element of the variance test. In addition, the Board notes that the Petitioners have submitted

letters of support for the grant of the requested variances from six of their neighbors, and that the record contains no opposition to the grant of the requested variances.

Accordingly, the requested variances are **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 Richard Melnick, Vice Chair, with Caryn Hines, Laura Seminario-Thornton, and Alan Sternstein 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 19th day of April, 2023.



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.