

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

Case No. A-5579

PETITION OF GLEN ZIMMERMAN  
(Hearing held May 9, 2001)

OPINION OF THE BOARD  
(Effective date of Opinion, July 27, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes to construct a new single-family dwelling that requires a 15.10 foot variance as it is within forty-eight (48) feet of the established front building line. The required setback is 63.10 feet.

The subject property is Lot 4, Block C, Potomac Village Subdivision, located at 10131 Counselman Road, Potomac, Maryland, in the R-200 Zone (Tax Account No. 00905547).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to demolish and reconstruct a single-family dwelling.
2. Dick Witmer, the petitioner's engineer, testified that the property is an oddly shaped lot located at the intersection of Counselman and Ormond Roads. Mr. Witmer testified that four properties were used in the calculation of the established building line. See, Exhibit No. 5.
3. Mr. Witmer testified that the proposed dwelling would be located forty-eight feet from street and that the existing dwelling is currently located forty-five feet from the street. Mr. Witmer testified that the proposed dwelling would be rebuilt using the same footprint of the existing dwelling and that the dwelling as proposed, would maintain the mature vegetation located in the northwest and southeast sections of the property.
4. The record contains a letter of opposition from Evelyn Prytula, an adjoining neighbor on Lot 3, which states that the size of the proposed dwelling would invade the serenity of the neighborhood and that the proposed dwelling may have safety issues because of its location on a dangerous corner, where the traffic is slowed by safety bumps.
5. In response to the issues of safety, Mr. Witmer stated that the existing parking is being relocated away from the interior of the lot, to an area that adjoins Ormond Road. See, Exhibit Nos. 13 and 15.

## 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-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is an oddly shaped lot, with an existing single-family dwelling located on the property. The proposed single-family dwelling would be rebuilt using the same footprint of the existing dwelling. The Board finds these conditions are unusual and peculiar, and would result in practical difficulties and an undue hardship upon the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a new single-family dwelling is the minimum reasonably necessary to overcome the exceptional conditions of the property.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction would be located three feet further away from the property line than the existing dwelling and would not materially change the visual view of the lot for the neighboring homes. The Board finds that the mature vegetation would provide screening for the proposed dwelling and that the current parking will be relocated from an area that adjoins homes to an area that adjoins the road. Further, the Board finds that the variance request would not be detrimental to the use and enjoyment of the adjoining and neighboring property owners.

Accordingly, the requested variance of 15.10 feet from the required 63.10 feet established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 6, 7(a) through 7(c) and 8(a) through 8(d).

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.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in this Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 27th day of July, 2001

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). 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.