

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5998

PETITION OF TYRRELL R. BRAND

(Hearing held July 21, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, August 30, 2004)

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 variance of forty-seven (47) feet as it is within thirty-three (33) feet of the established front building line. The required established building line is eighty (80) feet.

Tyrrell Brand and Ron Berns, property owners, were represented at the public hearing by Patricia Harris, Esquire, and Antonio Rebelo, an architect.

The subject property is Lot 33, Block B, Brandts Additions to Pineview Subdivision, located at 7734 Oldchester Road, Bethesda, Maryland, 20817, in the R-90 Zone (Tax Account No. 160700647457).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to demolish the existing residence and reconstruct a new single-family dwelling on the site.
2. The subject property is a triangular-shaped lot, that is 10,000 square feet, located at the intersection of Wilson Lane and Oldchester Road. The established building line requirement and other required setbacks for the property, reduce the lot's building envelope to 375 square feet. See, Exhibit No. 5(d) [building envelope site plan].
3. The existing residence is a slab-on-grade building that is 12,000 square feet. The existing residence is currently located 33 feet from Wilson Lane and the new single-family dwelling will be located the same distance from Wilson Lane. See, Exhibit No. 4(b) [survey plat]. The design of the new dwelling will be rustic-contemporary and will be similar in style to the existing house. See, Exhibit Nos. 14(b) through 14(e).

4. Lots 34, 35, 36 and 42 on Oldchester Road were used in the calculation of the established building line, resulting in an established building line for the subject property of 80 feet. See, Exhibit No. 4(b) [house location map]. The lots used in the established building line calculation range in distances from the street of 15 feet to 165 feet.
5. The record contains a letter from David C. Gardner, Esquire, on behalf of David and Christiane Chessler, who are adjoining neighbors on Lot 34. Mr. and Mrs. Chessler request that the new dwelling be set back eight feet from the southern boundary that the two properties share. The testimony in the record reflects that the new dwelling will be located eight feet from the shared southern boundary.

FINDINGS OF THE BOARD

Based on the petitioners' 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 subject property is an irregularly-shaped lot. The existing dwelling that will be demolished and replaced with a new single-family dwelling. The existing dwelling is currently located 33 feet from the street at its Wilson Lane boundary and the new dwelling will be located the same distance from the street. The new construction must meet an established building line requirement that reduces the property's buildable envelop to 375 square feet.

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners.

- (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.

- (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 Board finds that the variance request will continue the residential use of the property and that 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 variance requested for the new single-family dwelling will not significantly impact the view from the other homes in the neighborhood and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of forty-seven (47) feet from the required eighty (80) foot established front building line is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses and the representations of their attorney, 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. 4(a) and 4(b), 5(a) through 5(e) and 14(a) through 14(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

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

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 30th day of August, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) 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.