

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6017

PETITION OF MICHAEL AND SCOTT BANKS

(Hearing held October 15, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, October 25, 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 Sections 59-C-1.323(a) and 59-A-5.33. The petitioners propose the construction of a new single-family dwelling that requires a variance of 42.80 feet as it is within thirty-four (34) feet of the established front building line. The required established building line is 76.80 feet.

John R. Witmer, a professional land surveyor, appeared with the petitioners at the public hearing.

Cecily Rock, a neighbor at 6806 Brennon Lane; and Paul McCloskey, a neighbor at 3402 Cummings Lane, appeared in opposition to the variance request.

The subject property is Lot 8, Block H, Chevy Chase Manor Subdivision, located at 6810 Brennon Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 0700616126).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to demolish the existing dwelling and reconstruct a new single-family dwelling.
2. Mr. Witmer testified that the subdivision for the subject property was established in 1905 and that the right-of-way was also established at that time. See, Exhibit No. 16 [1908 subdivision plat]. The property is a corner lot located at the intersection of Cummings and Brennon Lanes. Mr. Witmer testified that with the later development of the subdivision, the right-of-way on Cummings Lane moved about 20 feet to the east of the petitioners' property. See, Exhibit No. 17 [1948 subdivision plat].
3. Mr. Witmer testified that the movement of the right-of-way adds additional footage to the calculation of the established building line when applied to the

petitioners' property. Mr. Witmer testified that the application of the established building to the property results in a building envelope of approximately 20 x 41 feet.

4. Scott Banks testified that the proposed dwelling will have a footprint similar to the existing dwelling and that the new house will be located further from the street than the existing house. See, Exhibit No. 18 [rendered site plan]. Mr. Banks testified that the design of the house is a colonial with a wrap-around porch and that it will be similar to some of the recently-built homes in the neighborhood.
5. Ms. Rock testified that she believes that there is nothing unusual about the lot and that the size of the new house would not be in character with the other homes in the neighborhood. Ms. Rock testified that she believes that the new house would create a safety hazard at the intersection because it would obstruct visibility. Ms. Rock testified that the property has a large magnolia tree that is a landmark in the neighborhood and that she would like to see it preserved.
6. Mr. McCloskey testified that he represents a resident that lives at 3402 Cummings Lane and that the neighbor believes that the new house will create safety issues.
7. In response to the neighbors' testimony, Mr. Banks testified that the magnolia tree on the property would be preserved and that the lot coverage for the new house, including the covered porch, is 28%.

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 subject property was established in 1905. The right-of-way at the intersection of Cummings and Brennon Lanes shifted approximately 20 feet away from the petitioners' property between 1905 and 1948. The property must meet an established building line requirement, which results in a buildable envelope for the property of approximately 20 x 41 feet. The shift in the right-of-way adversely impacts the property. The placement of the new house will be similarly located at the same site as the existing house and it will be located further from the street than the existing house.

The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the zoning 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 requested for the construction of a new single-family dwelling is 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 proposed construction 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 view of the lot will not materially change and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 42.80 feet from the required 76.80 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, 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) through 4(c) and 5(a) through 5(h).
3. The petitioners shall preserve the existing, large magnolia tree on the property.

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.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Louise L. Mayer, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 25th day of October, 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.