

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6051

PETITION OF M. I. HOMES OF D.C., LLC
(Hearing held March 2, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, April 1, 2005)

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-1.322(a). The petitioner proposes the construction of a new single-family dwelling that requires a variance of 44.60 feet as it is within forty (40) feet of the established front building line. The required established building line is 84.60 feet.

John Berger of M. I. Homes appeared with Stacy P. Silber, Esquire, Victor Kaznijian of Boland Farm Development and Jim Crawford, an engineer, at the public hearing.

The subject property is Lot 1, Boland Farm Subdivision, located at 20412 Boland Farm Road, Germantown, Maryland, 20876, in the R-200 Zone (Tax Account No. 0203437302).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a new single-family dwelling.
2. Ms. Silber stated that a preliminary subdivision development plan for the property was approved in 2002 by Maryland-National Capital Park and Planning Commission [M-NCPPC] and that the subject property is one of five properties approved under the subdivision plan. The subdivision plan approved a 40 foot building restriction line from Boland Farm Road for the subject property. See, Exhibit No. 4(a) [housing siting plan].

3. Ms. Silber stated that the Department of Permitting Services [DPS] reviewed and approved the plat for the subject property in March 2004, when a building permit was applied for in October 2004, DPS determined that the property must meet an 84.60 foot established building line. Ms. Silber stated that complying with the 84.60 foot established building line will result in a very shallow and narrow buildable area for the subject property that would be 14 feet in width and 125 feet in length.
4. Ms Silber stated that the design of the house will be in a colonial style and that the new house will be located 52.6 feet from its southern side yard boundary, 42.5 feet from its northern side yard, and 30 feet from its rear yard boundary. The new construction meets or exceeds the required setbacks for the zone.

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 is one of five lots that was approved under a subdivision development plan. The subdivision plan approved a 40 foot setback from Boland Farm Road for the subject property. DPS has determined that the property must meet an established building line requirement. The application of the established building line to the subject property results in a very shallow and narrow buildable area that would be 12 in width and 125 feet in length.

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 to 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 requested 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 proposed construction will result in 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 new construction will be in harmony with the surrounding properties and that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 44.60 feet from the required 84.60 foot 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 the testimony and exhibits of record, and the testimony of the witnesses and the representation of the 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) and 5.

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.

Chair Allison Ishihara Fultz and Board member Donna L. Barron were necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Wendell M. Holloway, with Louise L. Mayer, in agreement, the Board adopted the foregoing Resolution.

Louise L. Mayer
Acting Chair, 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 1st day of April, 2005.

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.

