

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6183

PETITION OF WILLIAM AND LISA SINGLE

(Hearings held February 7 and 28, 2007)

OPINION OF THE BOARD

(Effective date of Opinion, May 14, 2007)

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 39.47 feet as it is within 30.80 feet of the established front building line. The required established building line is 70.27 feet.

Stephen Orens, Esquire, and Rebecca Willens, Esquire, represented the petitioners at the public hearing. James King of Cass Engineering and Mark Zaracuto of Studio Z Design Concepts also appeared as witnesses for the petitioners.

The subject property is Lot 26, H. M. Martins 3rd Addition to Chevy Chase Subdivision, located at 3501 Raymond Street, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 0700520996).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a new single-family dwelling.
2. Mr. Orens stated that the subject property is a long, narrow lot with a significant slope, and a 28-inch magnolia tree in the western side yard of the property. Mr. Orens stated that the lot has an ephemeral stream located in the center of the property that cuts the lot in half. Mr. Orens stated that the stream is a part of the stream valley system that requires a buffer between the stream and the house. The subject property is 17,900 square feet. See Exhibit Nos. 15 [rendered site plan] and 20 [neighborhood map and EBL survey].

3. Mr. Orens stated that the subject property shares an existing 15-foot gravel driveway with Lot 25 and that the location of the garages on both lots must be aligned in a way that provides access from the public right-of-way. See Exhibit Nos. 18(b) and 18(d) [photographs].
4. The petitioners testified that the two property owners do not have a written easement regarding the shared driveway. The petitioner testified that there are no other shared driveways on his street and that siting the house at the EBL would prevent easy access to the neighboring garage. The petitioners testified that the shared driveway is approximately 14-15 feet in width and that the property line runs down the middle of the driveway.
5. Mr. King testified that the subdivision of the neighborhood was platted in 1905 and that the petitioners' house and the adjoining house on Lot 25 were built at the same time. Mr. King testified that most houses on Raymond Street are uniformly sited and their locations from the street range between 19.2 feet to 31.0 feet. Mr. King testified that two houses severely skew the EBL for the subject property, Lot 22, which is 83.7 feet from the street and Lot 20/P19, which is 338.1 feet from the street.
6. Mr. King testified that there is a significant elevation change of 20-25 feet at the intersection of Melville Place and Raymond Street, which is east of the subject property. Mr. King testified that the application of the EBL combined with the 28-inch magnolia tree and the stream are conditions that uniquely impact the use of the subject property. Mr. King testified that the stream makes the rear yard unusable. See Exhibit Nos. 16 [rendered EBL diagram/survey] and 18(k) [photograph of intersection].
7. Mr. King testified that the stream crosses the subject property at its eastern and western side yards, moves on to Lot 25 to the east of the subject property and on to Lots 154 and Part Lot 26 to the west of the subject property. Mr. King testified that the stream is piped once it reaches Part Lot 153. In response to questions from the Board, Mr. King testified that the Park and Planning guidelines consider an ephemeral stream a drainage ditch and has no setback requirement.
8. Mr. Zaracuto testified that the existing driveway must accommodate the petitioners and the neighbors use of it. In response to questions from the Board, Mr. Zaracuto testified that the setback as required by the zoning ordinance would be 6 feet below the natural grade of the property where currently the front of the house is required. See Exhibit No. 15 [rendered version of exhibit no. 6/site plan].

9. Mr. Orens stated that most of the homes westward of the subject property that are within 300 feet are sited between 29 and 31 feet from the street and that all of the homes eastward of the subject property within 300 feet and beyond are all sited at the EBL requested by the petitioners. Mr. Orens stated that the uniqueness of the property is the existing shared access to the subject property and the adjoining property, Lot 25, which cannot be changed without altering the access to the two properties.
10. In response to questions from the Board, the petitioner testified that the subject is unique because of the shared driveway and that there is not sufficient width between the two houses for the homeowners on Lot 25 to have a separate driveway to access their property. The petitioner testified that his lot is 50 foot wide and that the shared driveway is 15 feet wide and that incorporating the driveway on his lot would reduce the lot's width to 35 feet. The petitioner testified that all of the rear yards on his side of Raymond street slope, but to different degrees.

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 Board finds that the subject property is narrow and uniquely encumbered by an existing shared driveway with Lot 25 and that the record reflects a long history of shared use by the property owners on Lots 25 and 26. The Board finds that the removal or relocation of the shared driveway would adversely impact the use of Lot 25 and that the petitioners are unable to act unilaterally to alter or relocate the shared driveway. The Board finds that this is an exceptional circumstance that is peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon 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 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 variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 39.47 feet from the required 70.27 foot established front building line for the construction of a new single-family dwelling 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 attorneys, 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 and 9(a) through 9(d).

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 Wendell M. Holloway, seconded by Catherine G. Titus, with Donna L. Barron, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 14th day of May, 2007.

Katherine Freeman
Executive Director

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.