

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6243

PETITION OF STEVEN BOYLE

(Hearing held April 2, 2008)

OPINION OF THE BOARD

(Effective date of Opinion, May 1, 2008)

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 the construction of a new single-family dwelling that requires a variance of thirteen and sixty-five hundreds (13.65) feet as it is within thirty-one and nine tenths (31.9) feet of the established front building line. The required front lot line setback is forty-five and fifty-five hundreds (45.55) feet.

Stacy Silber, Esquire, represented the petitioner at the public hearing and Nick Mroczkowski and Jeffrey Stoiber, architects, provided testimony at the public hearing.

The subject property is Lot 3 and Part of Lot 4, Block 10, Rollingwood Subdivision, located at 3115 Leland Street, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00531955).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the demolition of the existing house and the reconstruction of a new single-family dwelling.
2. Ms. Silber stated that the subject property is located on Leland Street, which is a very steeply, sloped street. Ms. Silber stated that the change in topography from the bottom to the top of Leland Street is about 15-20 feet. Ms. Silber stated that the grade at the front of the subject property drops about 14 feet and that a stop sign is also located at the front of the lot. Ms. Silber stated that the stop sign at the front of the property applies only to descending traffic and not the ascending traffic. Ms. Silber stated that the stop sign combined with the street's traffic presents a difficult and unsafe condition in the usage of the property's front yard.

3. Ms. Silber stated that the existing house was built in the 1940s and that the house is sited 28 feet 7 inches from the front property line. Ms. Silber stated that the proposed house will be sited further from the street at 31 feet and 9 inches from the front property line. Ms. Silber stated that the subject property is a pie-shaped lot, which narrows at its rear yard. Ms. Silber stated that the topography of the subject property drops in multiple directions, the lot drops 14 feet from west to east, 15 feet from north to south and about 7 feet in the rear yard. Ms. Silber stated that the shape of the lot combined with the topography makes placement of the proposed house very challenging. See Exhibit Nos. 4 [site plan] and 11 [zoning vicinity map].
4. Ms. Silber stated that the property's unique environmental feature is a specimen tree located in the rear yard and that to site the proposed house deeper in the lot would require the removal of the specimen tree. Ms. Silber stated that the subject property is also impacted by the layout of the street with the bus routes and the curvature of the street.
5. The petitioner testified that the subject property was surveyed and that the extreme rear of the property is at a 233 foot elevation, while the back of the house is a 242 foot elevation. The petitioner testified that that the 14 foot drop in topography is over an area of about 105 feet and that his lot comes to a crest at its back corner and then the topography slopes downward. The petitioner testified that the lot is 10,956 square feet.
6. Mr. Mrcozkowski testified that area behind the house is a flat zone, then starts to tail off. Mr. Stoiber testified that pushing the house back 13 feet would require the removal of a specimen tree and would eliminate a safe play area for the petitioner's children. Mr. Stoiber testified that the siting of the house 13 feet back would also crowd the adjacent homes and loom over the homes to the east and west of the subject property. Mr. Stoiber testified that the property's buildable envelope is 4,356 square feet. See Exhibit Nos. 10(a)-(m) [photographs] and 20 [street relationship plan].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) 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 petitioner's lot has no exceptional topographical or other extraordinary conditions that are peculiar to the property that are not shared with the adjoining and neighboring properties and that the lot's sloping topography is a characteristic of the neighborhood. The Board

notes that the size of the petitioner's lot significantly exceeds the minimum lot size for the zone.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of thirteen and sixty-five hundreds (13.65) feet from the required forty-five and fifty-five hundreds (45.55) foot required established front building line for the construction of a new single-family dwelling is denied.

The Board adopted the following Resolution:

On a motion by David K. Perdue, seconded by Catherine G. Titus, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, 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.

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 1st day of May 2008.

Katherine Freeman
Executive Director

NOTE:

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.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.