

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. A-6268

PETITION OF CLARA CHAN
(Hearing held January 7, 2009)

OPINION OF THE BOARD
(Effective date of Opinion, March 6, 2009)

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 variances from Sections 59-C-1.323(b)(2) and 59-C-1.323(a). The existing one-story addition requires a variance of five (5) feet as it is within fifteen (15) feet of the rear lot line and of thirteen (13) feet as it is within twelve (12) feet of the front lot line. The required rear lot line setback is twenty (20) feet and the required front lot line setback is twenty-five (25) feet.

Dana Duvall, the petitioner's contractor, appeared with the petitioner at the public hearing. Cindy and Domenic Finelli, adjoining neighbors, appeared in opposition.

The subject property is Lot 1, Block 5, Pinehurst Village Subdivision, located at 7001 Bybrooke Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00645301).

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

EVIDENCE PRESENTED TO THE BOARD

1. The existing one-story addition requires variances to remain in the northwest section of the subject property.
2. The petitioner testified that the construction was started without a building permit because the subject property received a variance in 1995 to construct a one-car garage. The petitioner testified that she believed that the variance could be applied to the new construction because it is an extension of the garage. The petitioner testified that the property is a corner lot and that she believed that she could designate which boundary would be the side or rear yard from information found on the Department of Permitting Services' (DPS) website. The petitioner testified that a later inspection by DPS required that

- the new construction needed a variance. See Exhibit Nos. 4(a) [site plan] and 9 [BOA opinion dated 5/22/95].
3. The petitioner testified that the construction started as an aquatic pool for her mother, who had a stroke soon after a hip replacement in 2007. The petitioner testified that her mother does not speak English and could not attend a rehabilitation center for physical therapy. The petitioner testified that in consultation with her mother's physician, it was determined that aqua therapy would be a better treatment for her mother's medical condition. The petitioner testified that her mother needs assistance when using her walker, with movement and with physical therapy. The petitioner testified that her mother continues to receive therapy to prevent further shrinkage of muscle and for mobility of arthritis in her knees. The petitioner testified that she is her mother's family physician.
 4. The petitioner testified that the subject property is 7,918 square feet and that the lot's buildable area is 2,112 square feet. The petitioner testified that the footprint of the house without the addition is 1,410 square feet and with the addition the footprint would be 1,922 square feet.
 5. Mr. Duvall testified that the existing one-story addition was built without a building permit. Mr. Duvall testified that the lot's topography from West Greenvale Parkway slopes upward approximately 8 feet and that there are existing trees and shrubbery installed in this area. Mr. Duvall testified that the topography in the northern section of the lot has a retaining wall and that the topography in the eastern section of the lot is fairly level.
 6. Mr. Finelli testified that his property adjoins the subject property at its northern boundary. Mr. Finelli testified that he is in opposition to the variance request and that the subject property has no exceptional topographical or other conditions that satisfy the zoning requirements for a variance. Mr. Finelli testified that the variance request is not the minimum reasonably necessary because the prior development of the lot has limited the placement of new construction on the lot. Mr. Finelli testified that the addition could have been built on the lot without the need of a variance if the petitioner had applied for a building permit prior to starting the construction of the addition. Mr. Finelli testified that his view and the use and the enjoyment of his property are negatively impacted by the existing structure. See Exhibit Nos. 14 [site plan] and 16(a)-(d) [photographs].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do 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 is not constrained by either its shape or its size and that the lot has no exceptional topographical or other extraordinary conditions that are peculiar to the subject property. The Board finds that the subject property exceeds the minimum lot size for the R-60 Zone. The Board notes that the uniqueness of the subject property for the purposes of evaluating the petition for a variance does not refer to the extent of the improvements on the property or the location of structures on the lot. Accordingly, the location of any existing improvements on the subject property is not a factor that the Board can take into account in evaluating a petition for a variance. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1995).

The Board considered whether the variances could be granted as an accommodation for the petitioner's mother's disability under the Fair Housing Amendments Acts. The Board finds that the variance request does not meet the provisions under the ADA and the FHAA requirements for reasonable accommodation because the conditions of the petitioner's mother could be accommodated without the need for a variance, and new construction could be built on the property without the necessity of a variance.

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 variances of five (5) feet from the required twenty (20) foot rear lot line setback and of thirteen (13) feet from the required twenty-five (25) foot front lot line setback for the existing one-story addition are denied.

The Board adopted the following Resolution:

On a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Walter S. Booth and Catherine G. Titus, Chairman, 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.

Catherine G. Titus
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 6th day of February, 2009.

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.