

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600**

[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6303**

**PETITION OF MHP MAPLE TOWERS LLC**

(Hearing held October 14, 2009)

**OPINION OF THE BOARD**

(Effective date of Opinion, November 6, 2009)

**CLERICAL CORRECTION: 13 FOOT RETAINING WALL VARIANCE**

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-2.413(b), 59-C-2.413(a)(b) and 59-C-2.413(a). The existing 82-foot, eight-story, multi-family building requires variances of: (a) 19.70 feet as it is within 36.30 feet of the rear lot line; and (b) 4.50 feet as it is within 91.50 feet of the front lot line. The petitioner proposes the construction of a 10.1 foot retaining wall that requires a variance of 22.70 feet as it is within 47.30 feet of the front lot line and a 13 foot retaining wall that requires **a of 14.40 feet as it is within 15.6 feet of the rear lot line.**

The required rear lot line setback is fifty-six (56) feet and the required front lot line setback is ninety-six (96) feet for the existing multi-family building. The required front lot line setback is seventy (70) feet for the 10.1 foot retaining wall and the required rear lot line setback is thirty (30) feet for the 13 foot retaining wall.

Soo Lee-Cho, Esquire; Praj Kasbekar, project manager Montgomery Housing Partnership; Toby Wilson, project manager Macris, Hendricks and Glascock; and Matthew Fine, Zavos Architecture and Design, represented the petitioner at the public hearing.

The subject property is Lots 9 and 10, Block 60, Takoma Park Subdivision, located at 7610 Maple Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 01079361).

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

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the renovation and rehabilitation of the existing 82-foot, eight-story, multi-family building.
2. The subject property is a 1.04 acre parcel that was originally platted in 1898. The subject property has a vacant, eight-story building that fronts on Ritchie Avenue and that is south of Maple Avenue. The subject property has an address of Maple Avenue, but actually has frontage on only Ritchie Avenue. The subject property is zoned R-10 (multi-family residential) and the site is surrounded by another R-10 developed property, the Park Ritchie Apartments. The subject property is surrounded by the Park Ritchie Apartments' parking area and swimming pool complex. See Exhibit Nos. 8(a) [zoning vicinity map] and 8(b) [subdivision plat].
3. The subject property was developed under the 1965 Zoning Ordinance standards and these development standards for the subject property have changed over time. The property was originally developed as a corner lot with the building facing Ritchie Avenue at its eastern boundary and Oswego Avenue at its southern boundary. The building's northern boundary was originally treated as the property's rear yard, however due to the development of the adjoining property, Oswego Avenue was later abandoned. The abandonment of Oswego Avenue converted the subject property from a corner lot to an interior lot. The front lot line setback for the building when constructed was fifty-six feet, under today's zoning regulations a ninety-six foot front lot line setback is required. A 20-foot portion of the existing building is currently sited in the required rear lot setback. The City of Takoma Park has requested that the petitioner preserve a large specimen tree located near the western section of the property. See Exhibit Nos. 4 [site plan] and 7(a) through 7(f) [photographs].
4. Ms. Kasbekar testified that the building on the subject property has been vacant since January 2006 and that the Maryland Housing Partnership (MHP) acquired the property in December 2008. Ms. Kasbekar testified that the proposed construction will replace everything in the building while maintaining the building's external structure. The building renovation includes the construction of a new entrance-vestibule/conference room/administrative office at the building's north side which necessitates a variance from the front lot line setback, however the new construction does not extend beyond the existing northeast corner of the building. See Exhibit Nos. 14(a) [existing conditions], 14(b) [approximate entrance canopy], and 14(c) [Ritchie Avenue Perspective].
5. Ms. Kasbekar testified that the grade in the parking area and at the front of building is currently 15% and that the current zoning regulations require a grade of 5%. Mr. Fine testified that the proposed vestibule for the building would protrude from the existing northeast face of building, but would be within the building restriction line. Mr. Fine testified that the entrance to the building would be accessible via steps that wrap around northern side of building and also provides accessibility to the parking located east of the building. Mr. Fine

testified that the retaining wall located in western section of the subject property provides an enclosure for the trash and refuse receptacles. Mr. Fine testified that this area must be accessible by physically impaired persons and must provide accessibility without crossing traffic. Mr. Fine testified that the trash receptacle area can not be located elsewhere on the site and comply with the required ADA regulations.

6. Mr. Wilson testified that current zoning regulations have two calculations for the determination of the front lot line setback and that Department of Permitting Services (DPS) has required that the subject property use the more restrictive calculation. Mr. Wilson testified that the required front lot line setback calculation to be used is either a baseline setback of 30 feet plus a ½ foot for building height over 30 feet or 70 feet from the street center line. Mr. Wilson testified that earlier zoning regulations did not require that the restrictive calculation be applied to the subject property. Mr. Wilson testified that Ritchie Avenue does not appear in the Master Plan and that the road does not have a specified right-of-way width. Mr. Wilson testified that the existing conditions of Ritchie Road may be the reason that DPS applied the more restrictive calculation of the front lot line setback to the subject property. See Exhibit Nos. 11 [1965 Zoning Ordinance], 12 [1972 Zoning Ordinance], 13 [1984 Zoning Ordinance], 15(a) [front elevation rendering], and 15(b) [rear elevation rendering].
7. Mr. Wilson testified that the topography on the subject property is steeply sloped and that the grade in some areas is as high as 15%. Mr. Wilson testified that the construction of retaining walls is throughout the subject property and that retaining walls are necessitated to accommodate the lot's topography. Mr. Wilson testified that the arborist for the City of Takoma Park has requested that a specimen tree located near the property's western boundary not be removed and that precautions be taken to preserve the tree. Mr. Wilson testified that the height of the retaining wall for the enclosure of the trash receptacles can not be lowered without negatively affecting the impacting the health of that specimen tree. See Exhibit Nos. 18(a) through 18(c) [photos].

### **FINDINGS OF THE BOARD**

Based on the binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply 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's topography is steeply sloped. The Board finds that the subject property was platted in 1898 and that the existing 8-story, multi-family structure was built under the development standards of the 1965 Zoning Ordinance. The Board finds that the renovation and rehabilitation of the existing building will not extend beyond the building's existing footprint. The Board finds that the abandonment of Oswego Avenue converted the subject property from a corner lot to an interior lot. The Board finds that the subject property has address of Maple Avenue, but fronts on Ritchie Avenue. Ritchie Avenue is a non-dedicated road in Montgomery County and frontage on Ritchie Avenue imposes a more restrictive application of the current development standards to the site.

The Board finds that the City of Takoma Park requires that an existing specimen tree that adjoins the subject property's western boundary be preserved as a condition of the development of the site. The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations will 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 variances requested for the renovation and rehabilitation of the existing 82-foot, eight-story, multi-family building and for the construction of a 10.1 foot retaining wall and a 13 foot retaining wall are 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 renovation and rehabilitation of the existing multi-family residential building and the proposed construction of a 10.1 foot and a 13 foot retaining walls will continue the multi-family residential use of the property and that the variances 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 proposed renovation and rehabilitation of the existing multi-family building and the proposed construction of the 10.1 foot and 13 foot retaining walls will not be detrimental to use and enjoyment of the adjoining and confronting properties.

Accordingly, the requested variances are granted as follows:

- (a) 9.70 feet from the required fifty-six (56) foot rear lot line setback for the existing 82-foot, eight-story, multi-family building on a motion by Carolyn J. Shawaker, seconded by David K. Perdue, with Walter S. Booth, Stanley B. Boyd and Catherine G. Titus, Chair, in agreement;
- (b) 4.50 feet from the required ninety-six (96) foot front lot line setback for the existing 82-foot, eight-story, multi-family building on a motion by Walter S. Booth, seconded by Carolyn J. Shawaker, with David K. Perdue, Stanley S. Booth, and Catherine G. Titus, Chair, in agreement;
- (c) 22.70 feet from the required seventy (70) foot front lot line setback for the construction of a 10.1 foot retaining wall on a motion by David K. Perdue, seconded by Walter S. Booth, with Carolyn J. Shawaker, Stanley B. Booth and Catherine G. Titus, Chair, in agreement; and
- (d) 14.40 feet from the required thirty (30) foot rear lot line setback for the construction of 13 foot retaining wall on a motion by Carolyn J. Shawaker, seconded by Catherine G. Titus, Chair, with Walter S. Booth and Stanley B. Boyd, in agreement, and with David K. Perdue, in opposition.

The variances are subject to the following conditions:

1. The petitioner shall be bound by all of the testimony and exhibits of record, the representation of its attorney, and the testimony of its 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 and 5(a) through 5(e).

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.

---

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

---

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.

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 a 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.