

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5691

PETITION OF DANIEL M. SNYDER

OPINION OF THE BOARD

(Hearing Held December 12, 2001)
(Effective Date of the Opinion, April 12, 2002)

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-1.326(a)(1) and 59-B-2.1. The petitioner proposes to construct (1) an accessory structure (swimming pool) in the side yard that requires a variance as accessory structures are to be located in the rear yard only; (2) an 11.1 foot fence/wall (main gate) that requires a 4.7 foot variance as it exceeds the maximum fence height of 6.6 feet; (3) a 7.7 foot internal fence/wall that requires a variance of 1.1 foot as it exceeds the maximum fence height of 6.6 feet; and (4) a ten (10) foot perimeter fence/wall that requires a 3.5 foot variance as it exceeds the maximum fence height of 6.6 feet.

The requested variances for the construction of (1) an accessory structure (swimming pool) and (3) a 7.7 foot internal fence/wall were withdrawn at the public hearing.

Robert H. Metz, Esquire, and Anne C. Martin, Esquire, represented the petitioner at the public hearing. James R. Crawford, a land planner from Dewberry and Davis, and John Imbiano, a landscape architect, testified for the petitioner. Rainer Sahmel, R. H. Webster, Avid Fartash, and James Murray for Mrs. Ramsey, testified in opposition to the variance request.

The subject property is Lots 1, 2 and 3, River Bend Subdivision, located at 11900, 11908 and 11916 River Road, Potomac, Maryland, in the RE-2 Zone. (Tax Account Nos. 0600404681, 0600404692 and 0600404704).

Decision of the Board: Requested variance for the fence/wall (main gate): **granted.**
Requested variance for the perimeter fence: **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct an 11.1 foot fence/wall (main gate) at the entry to the property. The petitioner also proposes to construct a 10 foot perimeter fence along the boundaries of the property. See, Exhibit No. 16.
2. Mr. Crawford testified that the 10 foot height of the perimeter fence is necessary due to the significantly sloping terrain of the property, to maintain the consistency in the design of the fence, and to prevent the deer from scaling the fence. Mr. Crawford testified that the perimeter fence, as proposed, would prevent deer from entering the property and would also provide an extra measure of security for the property from inadvertent trespassers from the adjacent National Park area.
3. Mr. Crawford testified that the property is a large pipe-stemmed lot that is made up of three lots. Mr. Crawford testified that the lot is impacted by a 200 foot easement that backs up to the C&O Canal and the steeply sloped topography of the land. See, Exhibit No. 20.

4. Mr. Crawford testified that the steep slope located at the front of the lot does not exist on the neighboring properties and that the front of the lot has a substantial swale that lessens on the neighboring properties. See, Exhibit Nos. 9(f) and 9(g).
5. Mr. Imbiano testified that the perimeter fence would be constructed of black chain-link with cedar poles and that the fence would be largely screened from view by the wooded areas on the property.
6. Mr. Imbiano testified that the proposed construction for the main gate would replace the existing limestone cap with a stone cap that would be approximately 12 inches in height. The fence/wall, as proposed, would be 7.3 feet in height, as shown on Exhibit Nos. 23(a) and 23(b).
7. Rainer Sahmel, an adjoining neighbor on Lot 8, testified that the 10 foot fence would be visible from his back yard. Mr. Sahmel testified that the trees provide a canopy and that there is no undergrowth to screen the fence. Mr. Sahmel testified that the proposed fence would close off the existing footpath to the canal and that the height of the fence is excessive.
8. R. H. Webster, an adjoining neighbor on Lot 7, testified that he supports Mr. Sahmel's testimony and that the fence would be visible from his property.
9. James Murray testified that he was representing Mrs. Ramsey, an adjoining neighbor on Lot 6, and that the fence would be visible from her property and detrimental to the use and enjoyment of her property.
10. Avid Fartash, an adjoining neighbor on Lot 1, testified that the fence would be very obstructive and that the existing vegetation on the petitioner's property would not screen the fence. A letter of opposition was received from the West Montgomery County Citizens Association.

FINDINGS OF THE BOARD

Based upon the binding testimony and the evidence of record, the Board finds that the variance requested for the 11.1 foot perimeter fence must be denied. The requested variance does not comply with applicable standards and requirements set forth in Sections 59-G-3.1(a) and (b) as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extra ordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's property has no peculiar topographical or other conditions that are not shared by the neighboring properties. The Board notes that although the property is distinct, and that only one other property is of a similar size, (see Exhibit No. 10, zoning vicinity map), all of the properties in the neighborhood are impacted by the 200 foot easement and the severely sloping topography.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variance for the construction of a 10 foot perimeter fence is not the minimum reasonably necessary. The Board notes that the existing topographical conditions do not prevent the construction of a fence on the property.

Accordingly, the request variance of 3.5 feet from the maximum permitted fence height of 6.6 feet for construction of a perimeter fence/wall is **denied**.

Based on the binding testimony and the evidence of record, the Board finds that the variance requested for the fence/wall (main gate) can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

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 front of the property has a steep slope and a substantial swale. The Board finds that the exceptional topography at the front of the lot is a condition peculiar to the property and that the strict application of the regulations would result in practical difficulties for and an undue hardship upon the property owner.

Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the requested variance for the construction fence/wall (main gate) 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 fence/wall (main gate) will continue the residential use of the property and 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 requested for the construction of a fence/wall (main gate) will not be detrimental to the use and enjoyment of the neighboring properties.

Accordingly, the requested variance of 4.7 feet from the maximum permitted fence height of 6.6 feet for the construction of fence/wall (main gate) is **granted** subject to the following conditions:

1. The petitioner shall be bound by all of the testimony and exhibits of record, the testimony of his witnesses and the representation of his 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. 7(b) and 7(d) and 8(a) and 8(b).

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.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Donald H. Spence, Jr., Chairman, in agreement, and with Angelo M. Caputo, in opposition, the Board adopted the foregoing Resolution. Board member Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
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 12th day of April, 2002

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.