

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. A-5742

PETITION OF MINA HOLLAND
(Hearings held May 1 and May 8, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, June 11, 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 Section 59-C-1.323(a). The petitioner proposes to construct a new single-family dwelling that requires variances of 11.20 feet as it is within twenty-five (25) feet of the established front building line (Sangamore Road) and of five (5) feet as it is within twenty-five (25) feet of established front building line (Walhonding Road). The established front building line from Sangamore Road is 36.20 feet and the established front building line from Walhonding Road is thirty (30) feet.

Christopher Hitchens, Esquire, represented the petitioner at the public hearing. Rachel Jeffries and Earnest M. Moore, adjoining neighbors, appeared in opposition to the variance request.

Gregory McClain, Zoning Investigator, Department of Permitting Services (DPS), provided testimony to the Board at the hearing held on May 8, 2002.

The subject property is Lot 26, Block 1, Glen Mar Park Subdivision, located at 5922 Walhonding Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 02933650).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a new single-family dwelling on property located at the intersection of Walhonding and Sangamore Roads.
2. Mr. Hitchens stated that the property is an oddly shaped, 5-sided lot and that the size of the lot narrows from west to east. Mr. Hitchens stated that Lot 26 was subdivided in 1991, which resulted in Lots 25 and 26. The petitioner is the owner of both properties.
3. Mr. Hitchens stated that the Maryland-National Capital Park and Planning Commission (M-NCPPC) required a 10-foot dedication line along Sangamore Road for Lots 25 and 26 as a result of the subdivision. Mr. Hitchens stated that the properties share a common driveway. See, Exhibit No. 7. Mr. Hitchens stated that the front of the proposed dwelling would face

Walhonding Road and that the design of the house would maximize the property's building envelope.

4. The petitioner testified that Lot 26 is 10,174 square feet and that Lot 25 is 17,000 square feet. The petitioner testified that the current access to Lot 26 is via Lot 25 and that access to Lot 25 would not be possible from Sangamore Road because of the large trees and the difference in grade between the two properties, which rises approximately 8 to 10 feet.
5. In response to questions from the Board, Mr. Hitchens stated that it was his understanding that no site plan was presented to DPS for the issuance of the building permit denials for the variance request.
6. Ms. Jeffries, an adjoining neighbor on Lot 35, testified that she is opposed to the proposed construction because the structure would reduce visibility and create a traffic hazard at the intersection of Walhonding and Sangamore Roads. Ms. Jeffries further testified that the proposed construction would destroy the existing trees on Lot 25, increase the density on the Lots 25 and 26, bring down the quality of life in the neighborhood and the value of her property.
7. Mr. Moore, an adjoining neighbor that resides at 5914 Walhonding Road, testified that he and a neighbor that reside at 5912 Walhonding Road, share a common concern about the potential for water runoff from Lot 25. Mr. Moore testified that a culvert is located under Walhonding Road and that the additional development would significantly impact the water runoff into the culvert.
8. In response to questions from Mr. Hitchens and the Board, Mr. McClain stated that he did not recall the review of a site plan for the proposed dwelling and that the issuance of the building permit denials was based upon the lot's frontage on Sangamore and Walhonding Roads.
9. Mr. McClain stated that the established building line for the property was an average of the existing houses on adjoining Lots 32, 33, 34, and 35 and that the address of a property is determined and assigned by M-NCPPC. Mr. McClain further stated that the rear lot line of a property is the lot line most parallel to the frontage on a public road, regardless of the orientation of the house.

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 property has no exceptional topographical or other conditions that are not shared with the other properties in the immediate neighborhood. The property is larger than the typical R-60 lot and the Board finds that the property could be developed without the need for a variance.

The petitioner subdivided Lot 25 resulting in the creation of Lots 25 and 26. The Board finds that the resulting lot size for Lot 25 is a self-created hardship.

The Board did not consider the 11.20 foot variance request (Sangamore Road) as the record does not contain information required by the Zoning Ordinance that would permit the evaluation of the proposed structure.

The petition does not meet the requirements of Section 59-G-1.3(a) above and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variances of 11.20 feet from the required 36.20 foot established front building line (Sangamore Road) and of five (5) feet from the required thirty (30) foot established front building line for the construction of a new single-family dwelling are denied.

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 Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, in agreement, and with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in opposition, the Board adopted the following 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 11th day of June, 2002.

Katherine Freeman
Executive Secretary to the Board

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.