

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

(240) 777-6600

CASE NO. A-5784

PETITION OF DUNG A. PHAN

RESOLUTION TO RE-OPEN THE RECORD AND ACCEPT INFORMATION

(Resolution Adopted October 30, 2002)
(Effective Date of Resolution: December 4, 2002)

The Board of Appeals has received a letter from Dung A. Phan, dated October 17, 2002. Mr. Phan states that the Department of Permitting Services notified him that the garage under construction in connection with the above captioned variance case is set back 66.5 feet from the front lot line. By Opinion dated August 16, 2002, the Board of Appeals granted Mr. Phan a fifty two foot variance for the house and garage to be built, based upon Exhibit Nos. 4 and 5(a) through 5(c) submitted by the Petitioner, at a setback of 70 feet from the front lot line. Mr. Phan's letter states, "We discussed this with DPS, and they referred us back to the Board to seek advice."

The Board of Appeals considered Mr. Phan's letter at its Worksession on October 30, 2002. The Board finds that the garage, as described in Mr. Phan's letter, appears to require an additional three and one-half foot variance from the 52 feet granted in the Board's August 15, 2002 Opinion. This additional three and a half feet was not part of the original application, public notification or public hearing on the case. The Board cannot now consider it. Therefore, by consensus:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. A-5784 is re-opened to receive Dung A. Phan's letter of October 17, 2002.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 4th day of December, 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 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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
(www.co.mo.md.us/council/board.html)

Case No. A-5784

PETITION OF DUNG A. PHAN
(Hearing held July 24, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, August 16, 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 a variance from Section 59-C-1.323(a). The petitioner proposes to construct a new single-family dwelling that requires a fifty-two (52) foot variance as it is within seventy (70) feet of the established front building line. The established building line is one hundred twenty-two (122) feet.

David Swann, builder, appeared with the petitioner at the public hearing. John Gude, Jr., a confronting neighbor on Parcel 529, also appeared at the public hearing.

The subject property is Lot 4, Parcel N638, Notley Acres Subdivision, located at 13734 Notley Road, Silver Spring, Maryland, in the R-200 Zone (Tax Account No. 00254463).

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

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a new single-family dwelling.
2. The petitioner testified that the property is a long, narrow, densely wooded lot. The petitioner testified that the lot's eastern side yard adjoins a culvert and that in order to comply with established building line, the house would be in line with the culvert.
3. The petitioner testified that the houses used in the calculation of the established building line are located to the east of his lot and range in distances from the street from 124 feet to 259 feet. The petitioner testified that the house to the west of his lot is located 56 feet from the street. See, Exhibit No. 9.
4. The petitioner testified that the further back the house is sited on the lot, the greater the height that house would have to be raised to permit

connection with the utility lines located in the street. The petitioner testified that the location of the house permits connection with the public utility lines and would provide a more uniform look on the street. See, Exhibit No. 4.

5. Mr. Swann testified that the lot's topography slopes downward from the road and that the further back the house is located, the lower the house will be in relation to the road. Mr. Swann testified that to site the house beyond the culvert would create a huge ditch at the front of the property and that the locating the house deeper on the lot would require the removal of a large number of the property's trees.
6. Mr. Gude entered a letter, a WSSC site survey, and a WSSC plat of survey into the record. Mr. Gude testified that the surveys show the front boundary of his property and that the front of his property extends to the south side of Notley Road and across the road. See, Exhibit Nos. 13, 14 and 15. Mr. Gude testified that the widening of Notley Road resulted in the County taking a portion of his front yard for the right-of-way. Mr. Gude testified that he does not have an easement agreement for access to Lot 4 from the right-of-way and wanted this information included in the record.
7. The record contains a letter of support from the Greater Colesville Citizens Association.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies 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 property is adversely impacted by the established building line, Section 59-A-5.33. These requirements, in combination with the lot's exceptional topography and the existing culvert are conditions peculiar to the property and result in practical difficulties to the petitioner.

The Board notes that the right-of-way issues are under the jurisdiction of the Department of Public Works and Transportation and can not be addressed by the Board of Appeals.

(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 single-family dwelling 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 proposed construction 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 record contains a letter of support from the petitioner's homeowner's association and the Board finds that the requested variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of fifty-two (52) feet from the required one hundred twenty-two (122) foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his 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(c).

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 Donald H. Spence, Jr., Chairman, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Allison Ishihara Fultz, in agreement, 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 16th day of August, 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.