

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6201

PETITION OF JAMES DEMATTIO

(Hearing held March 7, 2007; Worksession held March 14, 2007)

OPINION OF THE BOARD

(Effective date of Opinion, April 5, 2007)

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-A-5.33, 59-B-6.2, 59-C-1.323(a), and 59-C-1.323(b)(1). The petitioner proposes the construction of a new single-family dwelling that requires variances of: (1) 5.93 feet as it is within 2.38 feet of **each** side lot line setback; (2) 12.07 feet as it reduces the sum of both side yards to 5.93 feet. The required side lot line setback is eight (8) feet and the required sum of both side yards is eighteen (18) feet.

The subject property is Lot P8, Block 13, Pinecrest Subdivision, located at 6519 Allegheny Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 03174243).

Decision of the Board: Requested front lot line variance **not required**.
Requested **each** side lot line variance **granted**.
Requested sum of both side yards variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to demolish the existing single-family dwelling and construct a new single-family dwelling.
2. The petitioner testified that he had previously received variances for the renovation of the existing single-family dwelling and that during the renovation construction, termite damage was discovered. The petitioner testified that the boards that sit directly on top of the foundation that support the structure had been destroyed by termites. The petitioner testified that the three walls that made up 50% of the existing walls were laid down and set aside to be reinstalled once the termite damage was corrected. The petitioner testified that the Department of Permitting Services (DPS) determined that the removal of the three walls constituted new construction and that the ongoing

construction could not be considered a renovation, but would be considered new construction and that the property was issued a stop-work-order. See Exhibit No. 10 [A-6139 Opinion of the Board].

3. The petitioner testified that the house and lot were platted in 1909 and that the subject property is in a section of Takoma Park that was annexed by Montgomery County in 1997. The petitioner testified that the subject property is an exceptionally small, narrow lot that is 22.66 feet in width and 150 feet in length. The petitioner testified that his lot is 3,399 square feet in size and that the application of the current zoning regulations to the lot results in a buildable envelope that is 4.66 feet in width.
4. The Board noted on the record at the public hearing held on June 7, 2006, that these proceedings in the instant case has no bearing on Case No. A-6139, and that the determinations made in A-6139 are still valid.
5. The Board requested additional information from DPS on the application of Section 59-B-6.2 Existing buildings and structures under the Special Provisions for the Area of the City of Takoma Park Annexed into Montgomery County on July 1, 1997 to the subject property. This section of the zoning ordinance would apply to the subject property and all of the properties on the same block in determining the required front lot line setback. Susan Scala-Demby, Casework Manager, DPS, and Malcolm Spicer, Associate County Attorney, were present at the Board's proceedings on March 14, 2007, and were in agreement with the Board's application of Section 59-B-6.2 to the subject property. Because Section 59-B-6.2 defines the subject property and its neighbors as conforming, all properties within 300 feet of the subject property would properly be included in the EBL calculation. Because the resulting setback is 25.8 feet, no variance is required.

FINDINGS OF THE BOARD

Based on the petitioner's 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 petitioner's property is an exceptionally, narrow lot that is 22.66 feet in width in a zone where the minimum width is 60 feet. The Board finds that the petitioner's lot is 3,399 square feet in a zone where the minimum lot size is 6,000 square feet. The Board finds that the property is a severely, constrained lot and that the lot is 43% below the minimum lot size required for the R-60 Zone. The Board finds that the application of the required setbacks to the subject property results in a buildable envelope that is 4.66 feet in width.

The Board finds that these conditions are peculiar to the subject property and that the strict application of the zoning regulations would 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 construction of a new single-family dwelling 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 the proposed construction will continue the 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 variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of: (1) 2.20 feet from the required 25.8 foot front lot line setback, **not required**; (2) 5.62 feet from **each** of the required eight (8) foot side lot line setbacks, **granted**; (3) 5.93 feet from the required eighteen (18) foot sum of both side yards, **granted**; for the construction of a new single-family dwelling that is subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, 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(a) through 4(c) and 5(a) through 5(f).

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.

On a motion by Donna L. Barron, seconded by Catherine G. Titus, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
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 5th day of April, 2007.

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.

