

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/boa/>

**Case No. A-6735  
PETITION OF MICHELE DOZIER**

**OPINION OF THE BOARD**

(Opinion Adopted February 16, 2022)  
(Effective Date of Opinion: February 25, 2022)

Case No. A-6735 is an application for a variance needed for the construction of a single family dwelling. The proposed construction requires a variance of 17.80 feet as it is within 25.60 feet of the side street lot line (Rowen Road). The required setback is 43.40 feet, in accordance with Section 59.4.4.1.A of the Zoning Ordinance (Established Building Line).

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, February 16, 2022. All participation was done via Microsoft Teams. Petitioner Michele Dozier was present, assisted by her land planner, David McKee.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1.     The subject property is Lot P10, Block G, South Woodside Park Subdivision, located at 9017 Colesville Road in Silver Spring, Maryland, 20910, in the R-60 Zone. It is a corner lot located on the southeast corner of the intersection of Colesville Road and Rowen Road. The subject property is generally rectangular in shape with an arced corner at the intersection of the two roads. The property's north (Rowen Road frontage) and south (side) lot lines are significantly longer, at approximately 125 feet, than its east (rear) and west (Colesville Road frontage) lot lines, which are approximately 61 feet in length. See Exhibits 1, 3, 4, and 9(a).

2.     The Petitioner's Justification Statement ("Statement") describes the history of this property, and explains how its current shape and size came about, as follows:

The property is a portion of a larger lot originally created by subdivision plat number 294. The plat recorded in 1925 depicts Lot 10 as having dimensions of approximately 60 feet by 194 feet for a total area of about 11,640 square feet. In

1935, the State Roads Commission (SRC) obtained approximately 851 square feet from the lot for public use. In 1936, a conveyance of the "back portion" of Lot 10 occurred by Liber 642 folio 291. The conveyance is now part of the property located at 822 Rowen Road adjacent and to the east of the subject lot. Finally, in 1971, the State Roads Commission acquired an additional 370 square feet of land from the remaining portion of Lot 10. The subject property, which consists of 7,360 square feet of land, is what remains of the original Lot 10. This property history is summarized in a letter dated September 28, 2020 from the Montgomery County Planning Department to the current owners of the property, Scott and Phyliss Badesch.

See Exhibit 3. The Statement goes on to indicate that the Planning Department has determined that the subject property is a buildable lot, stating that "the property does qualify for an exemption to the platting requirement" and that "the property will not need to be recorded by record plat prior to issuance of a building permit." See Exhibits 3 and 8(b).

3. The Statement states that application of the R-60 setbacks to the subject property would result in 25 foot setbacks from both road frontages, a 20 foot rear setback, and a seven (7) foot side setback (applicable because the lot was recorded before 1954). The Statement notes that in addition to the R-60 setbacks, pursuant to Section 59.4.4.1.A of the Zoning Ordinance, established building line ("EBL") setbacks are also applicable to this property. The Statement states that based on the survey data collected at the site, an established building line does not apply along the Colesville Road frontage, but an EBL of 43.4 feet applies along the Rowen Road frontage. See Exhibit 3. The Petitioner's Site Plan includes the EBL calculation. See Exhibit 4.

4. The Statement states that the application of the EBL setback along Rowen Road and the applicable side setback along the property's southern lot line leaves a buildable envelope that is less than 12 feet wide, rendering the property unbuildable:

The lot width from Rowen Road is approximately 61 feet. The application of a 43.4-foot EBL (front setback) plus the 7-foot side setback shown along the boundary opposite from Rowen Road (southern boundary) leaves a building width of less than 12 feet. As stated, the lot is unbuildable with this condition placed upon the lot.

See Exhibit 3. The Statement later expands on the rationale behind this assertion in stating that the requested variance satisfies Section 59.7.3.2.E.1 of the Zoning Ordinance, which requires a finding that denying the variance would result in no reasonable use of the property, as follows:

Justification: As stated in the Zoning Ordinance, the intent of the R-60 zone is to provide designated areas of the County for moderate density residential uses. The predominant use is residential in a detached house. Accordingly, reasonable use of the property would be a single-family detached home. As noted above, application of an EBL along Rowen Road makes the property unbuildable for a

new home due to the extreme narrow width remaining after setbacks including the EBL are considered. Without a variance, this building lot is not buildable.

The Statement requests permission to develop the property in compliance with the 25 foot front setback generally applicable in the R-60 Zone in lieu of the EBL. See Exhibit 3.

5. In addition to asserting that the requested variance satisfies Section 59.7.3.2.E.1 of the Zoning Ordinance, the Statement also addresses each of the factors necessary for the grant of a variance under Section 59.7.3.2.E.2 of the Zoning Ordinance. See Exhibit 3. Because the Board found that the requested variance could be granted under Section 59.7.3.2.E.1 of the Zoning Ordinance, that evidence is hereby acknowledged but is not recounted herein because it is not necessary to the Board's decision.

6. The record contains letters of support for the grant of the requested variance from several of the Petitioner's neighbors along Rowen Road, including her abutting neighbor at 822 Rowen Road. See Exhibits 7(a)-(e). The Board notes that Petitioner's abutting neighbors along Colesville Road currently own and are selling her the subject property. See Exhibit 8(c).

7. At the hearing, David McKee, the Petitioner's land planner, testified that the Petitioner is the contract purchaser of the subject property, which he described as an unimproved corner lot in the R-60 Zone. Mr. McKee explained the history of the changes made to the property since its original recordation, and testified that the Planning Department says that the 7,360 square foot property that remains is a buildable lot. He stated that the standard R-60 setbacks would include a 25 foot front setback, a seven (7) foot side setback, and a 20 foot rear setback. Mr. McKee testified that the EBL does not apply along the property's Colesville Road frontage, but does apply along its Rowen Road frontage.

Mr. McKee testified that the property is oriented towards Colesville Road, and that the other lots that front on Rowen Road are oriented differently and as a result, are much deeper than the subject property, which has a depth of approximately 61 feet when measured from Rowen Road. Mr. McKee stated that the house on the abutting property to the east of the subject property is set back 81 feet from Rowen Road, and that the other properties used for the EBL calculation along Rowen Road are set back between 30 and 35 feet, resulting in an EBL of 43.4 feet. He testified that application of this EBL to the subject property, coupled with application of the seven (7) foot side setback, leaves the property with a buildable area that is approximately 12 feet deep.

## **FINDINGS OF THE BOARD**

Section 59.7.3.2.E of the Montgomery County Zoning Ordinance, "Necessary Findings," provides that in order to grant a variance, the Board must find that:

- (1) denying the variance would result in no reasonable use of the property; or
- (2) each of the following apply:

- a. one or more of the following unusual or extraordinary situations or conditions exist:
- i. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
  - ii. the proposed development uses an existing legal nonconforming property or structure;
  - iii. the proposed development contains environmentally sensitive features or buffers;
  - iv. the proposed development contains a historically significant property or structure; or
  - v. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;
- b. the special circumstances or conditions are not the result of actions by the applicant;
- c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;
- d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and
- e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

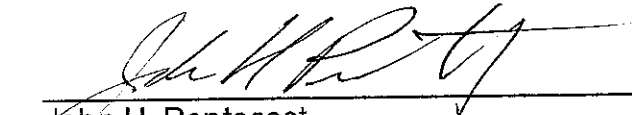
Based on the binding testimony and the evidence of record, the Board finds that the requested 17.80 foot variance from the established building line/side street lot line setback along Rowen Road must be granted, since denial of this variance would result in no reasonable use of the subject property, in satisfaction of Section 59.7.3.2.E.1 of the Zoning Ordinance. In support of this, the Board finds that the Planning Department has confirmed that the subject property is a buildable lot in the R-60 Zone, and that the application of the required setbacks to this property would result in a buildable area that is approximately 12 feet deep which, per the Statement, renders the property unbuildable for construction of a single family home. See Exhibits 3, 4, and 8(b). Having found that the requested variance satisfies Section 59.7.3.2.E.1 of the Zoning Ordinance and thus can be granted, the Board finds that there is no need to address the elements of the variance test that are set forth in Section 59.7.3.2.E.2.

Accordingly, the requested variance of 17.80 feet, needed to allow construction of the proposed single family dwelling, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5(a)-(e) (interior floor plans/layout excluded).

Based upon the foregoing, on a motion by Richard Melnick, seconded by Mary Gonzales, with John H. Pentecost, Chair, and Caryn Hines in agreement, and with Bruce Goldensohn, Vice Chair, necessarily absent, 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.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 25th day of February, 2022.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**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. 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.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.