

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. A-6737

PETITION OF ELAINE CHEN

OPINION OF THE BOARD

(Opinion Adopted February 23, 2022)
(Effective Date of Opinion: March 2, 2022)

Case No. A-6737 is an application for a variance needed for the proposed construction of a single family dwelling. The proposed construction requires a variance of 44.90 feet as it is within forty (40) feet of the front lot line (Foreman Boulevard). The required setback is 84.90 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 23, 2022. All participation was done via Microsoft Teams. Petitioner Elaine Chen was present, assisted by her land planner, David McKee.

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

EVIDENCE PRESENTED

1. The subject property is Lot 29, Block B, Clark Meadows Subdivision, located at 22800 Timber Creek Lane in Clarksburg, Maryland, 20871, in the R-200 Zone. It is a corner lot located on the northwest corner of the intersection of Timber Creek Lane and Foreman Boulevard. While the boundary of the property is comprised of six distinct segments, the property is roughly rectangular in shape, with about half as much frontage along Timber Creek Lane (eastern boundary) as it has along Foreman Boulevard (southern boundary). See Exhibits 3 and 4(a).
2. The Petitioner's Justification Statement ("Statement") states that the Petitioner is seeking to construct a new home on the subject property. See Exhibit 3.

3. The Statement indicates that the minimum setbacks in the R-200 Zone include a front setback of 40 feet, a rear setback of 30 feet, and a side setback of 12 feet. It states that in addition to the minimum R-200 setbacks, the Established Building Line (EBL) requirements of Section 59-4.4.1.A also apply to this property. The Statement explains that when the property was surveyed in 2021, it was determined that a 134.8 foot EBL setback applies along the property's Timber Creek Lane frontage, and an 84.9 foot EBL setback applies along the property's Foreman Boulevard frontage. See Exhibit 3.

4. The Statement indicates that the application of the EBL setbacks imparts a hardship on the subject property because of its shape, stating that:

The subject lot is exceptionally shallow measured from Foreman Boulevard when compared to the lots located to the east along Foreman Boulevard, especially the 2 nearest lots. In addition, the usable area of the lot is additionally restricted by an EBL associated with Timber Creek Lane. The two EBL's when applied in combination severely limit the use of the lot when compared to other lots in the neighborhood.

See Exhibit 3. The Statement goes on to state that despite the property's relatively large size compared with neighboring properties, the subject property is "much less usable without a variance due to the special circumstances of the lot," going on to state that "[r]elief is needed from one or the other of the EBL's to allow a home to be placed appropriately on a lot of this size." See Exhibits 3, 3(a), and 3(b). The Zoning Vicinity Map confirms that the subject property is oriented differently than the neighboring properties along Foreman Boulevard, such that the subject property is much shallower than the neighboring properties that were used to calculate the Foreman Boulevard EBL. See Exhibit 9(a).

5. The Statement describes the history of this property in detail, as follows:

PROPERTY HISTORY

The subject lot was part of a subdivision which was planned out during the early to mid 1990's. The Preliminary Plan which included the lot was approved on July 14, 1994 (MNCPPC Application No. 119930020). The lot was recorded as a building lot on November 7, 1995 by subdivision plat number 19900 along with adjacent lot number 33. [See BOA Exhibit 9(b).] No other lots were included on the plat; however, the plat depicts and makes reference to "future" lots 30, 31, and 32 located immediately southwest of the subject lot along Foreman Boulevard. These three lots and a fourth lot (Lot 43) were ultimately included on a subsequent plat (Plat No. 20812) which was recorded on August 6, 1998. [See BOA Exhibit 9(c).] Plat number 20812 also included previously recorded Lot 33, which was reconfigured.

Homes were built on all five of the lots referenced above including the subject lot in 1999. All of the houses remain, except for the house built on the subject lot. As

we understand it, that home was damaged by a fire and was ultimately removed from the site in accordance with a demolition permit issued in 2012 (permit no. 593686).

A series of aerial images obtained from County archives are included with this variance submission to show the circumstances of the property and surrounding area. The 2002 photo shows the home originally built on the lot and other homes in the nearby area including the homes which are used to derive established building lines applicable to the lot. [See BOA Exhibit 8(a).] The subsequent photo from 2012 shows the house on the property is damaged and in the process of being removed. [See BOA Exhibit 8(b).] And the final photo, from 2020, shows the current conditions of the lot and surrounding area. Although the home on the subject lot no longer exists in the 2020 photo, the outline of the old house is still visible. [See BOA Exhibit 8(c).]

A wall check survey from 1999 is included with the variance submission materials. [See BOA Exhibit 5(c).] This survey shows the original placement of the house on the subject lot. The house was built 40 feet from the front of the property along Foreman Boulevard, 43 feet from the northern boundary (rear lot line), and 81 feet from the western boundary (left side line). Today, a house cannot be built in the location shown on the 1999 survey without a zoning variance.

See Exhibit 3. The Statement goes on to indicate that “[a]s depicted in the 1999 survey, the original home was built 40 feet from the front lot line adjacent to Foreman Boulevard,” and to request that the Petitioner be allowed comport with the 40 foot minimum front lot line setback for the R-200 Zone instead of the EBL setback, indicating that this would “allow a new home to be built in approximately the same location as the original home which was built in 1999.” See Exhibit 3. Accordingly, the Statement asserts that the location proposed for the new home comports with the established historic or traditional development pattern of this street or neighborhood, noting that:

The historic pattern of development along Foreman Boulevard as evidenced by records including approved subdivision plans and the 1999 wall check survey is for a home on the subject lot to be setback 40 feet the road. Placement of a house in any other location is out of character with the neighborhood as planned and in poor relation to other homes in the neighborhood.

6. The Statement states that the Petitioner is not responsible for the afore-mentioned special circumstances pertaining to this property,¹ and indicates that the requested variance is the minimum needed to overcome these special circumstances:

The requested variance of 44.9 feet from the EBL for Foreman Boulevard would reestablish the approved and intended building envelope for the lot so that a new home could be built in a location similar to where a home was built in 1999. The property has the unusual condition of a EBL's for two streets which together

¹ SDAT indicates that the Petitioner purchased the subject property in 2021.

severely limit the usability of the lot. A variance from the EBL for Foreman Boulevard is needed for the lot to be usable in a manner appropriate for its location and R-200 zoning.

See Exhibit 3. The Petitioner's alternate site plans showing the application of the setbacks and resultant placement of the proposed home, depending on which side of the property is designated the side and which is designated the rear, also demonstrate that the requested variance is the minimum needed to allow reasonable placement of the proposed home on the subject property relative to its neighbors. See Exhibits 3(a) and (b).

7. The Statement at Exhibit 3 notes that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan or the applicable master plan, as follows:

The intent of the general plan and applicable master plan are to permit single-family residential use on the lot in accordance with R-200 zoning standards. Furthermore, the historical records for the subdivision and the lot show that the variance would allow a home to be placed on the lot similarly to where the home was placed on the lot in 1999 during the development of the subdivision.

8. Finally, the Statement states that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties, as follows:

Without the requested variance, the building envelope for the lot is severely restricted and is forced awkwardly close to the boundary line of the lot abutting to the north, Lot 43. A home placed in a location forced by both EBL's would be detrimental to the use and enjoyment of Lot 43. A home placed as proposed on the Site Plan would be set back from the north boundary by 50 feet with separation between the two houses of around 120 feet. Also, presumably, the established building line regulations are intended to protect the interest of owners of property along the same street. The nearest home along Foreman Boulevard would be separated from the proposed new home by approximately 155 feet. The relationship between homes depicted in the 2002 photo referenced earlier shows that the appropriate placement of a home on the subject lot, made possible with a variance, would be beneficial to all of the nearby lot owners.

See Exhibit 3. The record includes three letters of support for the grant of the requested variance, and no letters of opposition. See Exhibits 7(a)-(c).

9. At the hearing, Mr. McKee described the subject property for the Board, stating that it has approximately 320 feet of frontage along Foreman Boulevard and 160 feet of frontage along Timber Creek Lane. He recounted the property's history, and testified that a house was built on the subject property in 1999, at a distance of approximately 40 feet from Foreman Boulevard. He testified that the original house evidently burned down, and

that it was removed in 2012. He showed a photograph of the property's current condition. See Exhibits 8(a)-(c).

Mr. McKee testified that EBL setbacks apply along both street frontages, and that this "squeezes" the buildable area, leaving a buildable area that is narrow compared with adjacent properties, which are oriented differently and much deeper, and forcing a location that is not appropriate. He testified that the photographs in the record at Exhibit 8(a)-(c) show the historic development pattern in the neighborhood, and that the grant of the requested variance would allow the construction of a new home that comports with this pattern. Mr. McKee testified that the grant of the variance would have no impact on neighboring properties, and that without the variance, the placement of the new home would be adverse to the development on Lot 42.

10. The Petitioner testified that the Timber Creek Homeowners Association is aware of her proposal, and is supportive. See Exhibit 7(c).

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance from the front lot line along Foreman Boulevard complies with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, and can be granted, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

Based on the Statement, the Site Plan, Zoning Vicinity Map, and the testimony of Mr. McKee, the Board finds that the subject property is much narrower/shallower than the other properties used to calculate the EBL along Foreman Boulevard. See Exhibits 3, 4(a), and 9(a). The Board further finds that because of the property's narrowness/shallowness, the application of EBLs to the property results in an unusually constrained buildable area, and that taken together, these conditions constitute an extraordinary situation or condition, in satisfaction of this element of the variance test.

Section 59-7.3.2.E.2.a.v. - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

Based on the Statement, the photographs at Exhibit 8(a)-(c), and the testimony of Mr. McKee, the Board finds that the proposed construction will maintain the development pattern established when this subdivision was originally built by allowing the construction of a new home at approximately the same distance from Foreman Road and in the same approximate location as the home originally built on the subject property in 1999. Thus

the Board finds that the proposed construction would substantially conform with the established historic or traditional development pattern of this street or neighborhood, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

Per SDAT, the Petitioner purchased the subject property in 2021. Thus the Board finds that the Petitioner is not responsible for shape of the property, which was originally recorded in 1995, or for the location of the original house, which was built in 1999, in satisfaction of this element of the variance test.

3. *Section 59.7.3.2.E.2.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;*

Based on the Statement and the testimony of Mr. McKee, the Board finds that the application of the required setbacks to this property causes the Petitioner a practical difficulty by severely constraining the property's buildable envelope, on account of the property's relative narrowness, and by foreclosing the ability of the Petitioner to build a new home in the location of the original (1999) home and thus to comport with the development pattern of the neighborhood. The Board further finds that the requested variance is the minimum needed to overcome this practical difficulty and to allow development on the subject property that approximates the previous development and maintains a respectful distance from neighboring properties. In light of the foregoing, the Board finds that the requested variance is the minimum needed to overcome the practical difficulty that full compliance with the Zoning Ordinance would impose, in satisfaction of this element of the variance test.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the proposed construction would re-establish the residential use of the property and would allow a home to be placed on the property in a location similar to that of the original 1999 home, which was built during the development of the subdivision. The Board further finds, per the Statement, that the intent of the general plan and applicable master plan are to permit single-family residential use on the property in accordance with R-200 zoning standards, which is what is being proposed. In light of the foregoing, the Board finds that the requested variance can be granted without substantial impairment to the intent and integrity of the general plan and applicable master plan, in satisfaction of this element of the variance test.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties in that it would allow the construction of a new home in substantially the same location on the property as a previously existing home. The Board further finds, based on the testimony of the Petitioner and the letters of support in the record, that the Petitioner's homeowners association and neighbors support the grant of the requested variance. See Exhibits 7(a)-(c). In light of the foregoing, the Board finds that granting the variance to allow the proposed construction will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested 44.90 foot variance from the front lot line (Foreman Boulevard) 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(a) and 5(a)-(b).

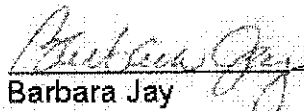
Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Caryn Hines and Roberto Pinero in agreement, the Board adopted the following Resolution:

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.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 2nd day of March, 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.