

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**100 Maryland Avenue, Suite 217
Rockville, MD 20850
(240) 777-6600**

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

Case No. A-6888

PETITION OF ARUN SAREEN

OPINION OF THE BOARD

(Opinion Adopted November 6, 2024)

(Effective Date of Opinion: November 13, 2024)

Case No. A-6888 is an application for two variances needed for the construction of a new single-family dwelling. The proposed construction requires a variance of 864 square feet from the minimum required lot area, as the new dwelling will be built on a property with a lot area of 19,166 square feet. The minimum lot area is 20,000 square feet, in accordance with Section 59.4.4.7.B.1 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 22.4 feet in order to be built on a lot with a width of 77.6 feet at the front building line. The minimum required lot width at the front building line is 100 feet, in accordance with Section 59.4.4.7.B.1 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on November 6, 2024. Matthew Gordon, Esquire, appeared on behalf of Petitioner Arun Sareen, who was also present and testified. Eric Tidd, P.E., a Senior Project Manager with CAS Engineering, was also in attendance in support of the requested variances.¹

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

EVIDENCE PRESENTED

1. The subject property is Parcel 281, Chas and John Choice Subdivision, located at 18529 Strawberry Knoll Road in Gaithersburg, Maryland, 20879, in the R-200 Zone. It is a four-sided, unrecorded parcel, located on the east side of Strawberry Knoll Road. The property has an area of 19,307 square feet and is much deeper than it is wide. See Exhibits 3, 4, and 6.

¹ In addition to those persons supporting the grant of the requested variances, Kedin Rodriguez and Mejia Escobar, whose property abuts the subject property to the right, were also present at the hearing. Mr. Rodriguez explained that he and his mother were under the misimpression that because they had received the Board's hearing Notice, they were required to attend the proceedings. Mr. Rodriguez testified that he did not have any comments about the variance request.

2. The Petitioner's Statement of Justification ("Statement"), in the record at Exhibit 3, describes the history of this property as follows:

The boundaries of the Property were originally created by deed dated July 24, 1959 (attached hereto as Exhibit "E") and recorded among the Land Records at Liber 2627 folio 408, which described the property as "containing 0.50 acres of land, more or less."

By deed dated November 21, 1969 (attached hereto as Exhibit "F") and recorded among the Land Records at Liber 3921 folio 551, the Property's described land area was reduced to 19,826 square feet or 0.455 acres based on survey of R.K. Maddox, Surveyor, dated November 14, 1969. By agreement dated August 25, 1981 (attached hereto as Exhibit "G") and recorded among the Land Records at Liber 6769 folio 636 by the owner of the Property at that time, David and Elizabeth Blankenship, the Property's described land area was further reduced to its current land area, 19,307 square feet or 0.4432 acres of land, based on survey dated June 1, 1981 signed by Rodney L. Hanson, Registered Land Surveyor of Maryland.

3. The Statement states that a single-family dwelling was constructed on the property on or before 1957. The Statement states that this dwelling "was razed on November 1, 2010 pursuant to Demolition Permit No. 553241 in response to the Montgomery County Department of Permitting Services ("DPS") declaring the home unfit for human habitation," and that "[t]he single-family dwelling was in this condition when the Applicant purchased the Property, and not as a result of any action or inaction by the Applicant." The Statement notes that "the single-family dwelling could have been renovated, repaired or reconstructed pursuant to the exemption in Section 59-7.7.1.A of the Zoning Ordinance...." See Exhibits 3 and 7.

4. The Statement states that the Petitioner is seeking to construct a new single-family dwelling on the property, but that because the subject property has an area of only 19,307 square feet and is only 77.6 feet wide at the front building line, the Petitioner needs variances from the minimum lot size and minimum lot width at the front building line in order to do so. The Statement states that "M-NCPPC has advised that the only way for the Applicant to create a buildable, subdivided record lot is to first obtain approval of variances for minimum lot area and minimum lot width and then obtain approval of an Administrative Subdivision Plan and Record Plat applications." The Statement indicates that the extent of the variances needed may change as a result of these later processes.²

² The Statement states that "[a]ny changes to the lot width at the front building line as a result of public dedication requirements brought forth in a subsequent Administrative Subdivision application, and/or established building line survey calculations determined at the time of building permit, may further increase this nonconformity. As a result, the Applicant is seeking a variance from the minimum lot width at the front building line that is consistent with any required public dedications determined at the time of a future subdivision process." The Petitioner reiterates this at the end of his Statement, stating that "the minimum lot size and lot width at the front building line may be modified at the time of subdivision review, subject to the ultimate limits of any right-of-way dedication required by M-NCPPC and Montgomery County Department of Transportation. As a result, the Applicant is seeking approval of both variances as needed

5. The Statement states that the history of the subject property makes it unique for the purposes of satisfying Section 59.7.3.2.E.2.a.i of the Zoning Ordinance. The Statement states that when the property was originally created by deed in 1959, it "contained 0.50 acres of land, more or less," and thus had an area of +/- 21,780 square feet, more than the 20,000 square foot minimum for the R-200 Zone. The Statement states that "the size of the Property was reduced on two (2) occasions resulting in its current configuration of 19,307 square feet," and concludes that "[t]he Property is thus exceptionally small and narrow relative to the R-200 Zone's development standards." See Exhibit 3.

6. The Statement states that the proposed construction also substantially conforms with the established historic or traditional development pattern of the Petitioner's street or neighborhood, in satisfaction of Section 59.7.3.2.E.2.a.v of the Zoning Ordinance. The Statement recounts in great detail the development patterns of the single-family houses and subdivisions that surround the subject property. The Statement concludes that the size of the subject property would exceed the size of most surrounding properties, that the lot width of the subject property at the front building line would exceed the lot width of many surrounding properties, and that a single-family dwelling could be built on the subject property with setbacks that meet or exceed the setbacks of neighboring properties. The Petitioner includes plats of two neighboring subdivisions, and states that while these subdivisions are also in the R-200 Zone, they were constructed using the R-60 development standards. See Exhibits 3, 3(h), and 3(k). Accordingly, the Statement states that "[a]s a result, the established historic and traditional development pattern for the surrounding neighborhood has resulted in a majority of lots and lot widths that are much smaller than the minimum required by the R-200 Zone," and that "[b]ased on the foregoing, the granting of the requested variances will allow for construction of a single-family dwelling on the Property that substantially conforms with the established and traditional development pattern in the surrounding neighborhood on the east side of Strawberry Knoll Road." See Exhibit 3.

7. The Statement states that "the Property was a substandard size relative to the minimum lot size and width standards of the R-200 Zone" when the Petitioner took title. The Statement further states that the uninhabitable condition of the house on the property at the time of the Petitioner's purchase was not due to any actions of the Petitioner, but rather was attributable to the actions or inaction of the previous owner. See Exhibit 3.

8. The Statement states that the condemned structure was razed in 2010 "with the intention of constructing a replacement dwelling," and that "[t]he requested variances are necessary to create a buildable lot under the R-200 Zone." See Exhibit 3.

9. The Statement states that the narrowness and small size of the subject property, created by the multiple changes to its configuration over time, foreclose the Petitioner's ability to comply with the 20,000 square foot minimum lot size of the R-200 Zone and the

to satisfy the ultimate requirements to create a subdivided record lot through a subsequent Administrative Subdivision Plan and Record Plat process." See Exhibit 3.

Zone's 100-foot minimum lot width at the front building line, causing the Petitioner a practical difficulty. The Statement further states that the requested variances are the minimum needed to "create a buildable lot under the R-200 Zone and will allow for construction of a new dwelling that substantially conforms to the traditional and historic development pattern for the surrounding neighborhood." See Exhibit 3.

10. The Statement states that the requested variances can be granted without substantial impairment of the general plan and applicable Master Plan, in satisfaction of Section 59.7.3.2.E.2.d of the Zoning Ordinance. The Statement states that the applicable 1985 Gaithersburg and Vicinity Master Plan "does not contain Property specific recommendations for the type of development that is appropriate other than to specify the Property as suitable for TDR development with 4 dwelling units per acre." The Statement further states that the "requested variances will allow for construction of one (1) single-family dwelling that is consistent with [the] current density of the surrounding neighborhood constructed under the R-60 Zone" standards. Finally, the Statement concludes that "[t]he approval of the requested variances will further and advance the intent and integrity of both Thrive 2050 and the Master Plan by allowing for construction of a single-family dwelling that reinforces the traditional development pattern of the adjacent homes developed under the R-60 Zone standards." See Exhibit 3.

12. The Statement states that granting the requested variances will allow for construction of a dwelling that "that adheres to the traditional development pattern along the eastern side of Strawberry Knoll Road," and thus will not be adverse to the use and enjoyment of neighboring properties. The Statement notes that granting the requested variances will allow the Petitioner "to complete its planned replacement of this demolished home with a single-family home that meets or exceeds the setbacks established for the neighboring homes to the north and south." See Exhibit 3.

13. At the hearing, Mr. Gordon stated that the requested variances are needed to make the subject property into a buildable lot. He stated that his client purchased the property in 2010, and that it was substandard in size and lot width at that time. Mr. Gordon stated that there was a dwelling on the property when his client purchased it that was left in derelict condition by the previous owner. He stated that pursuant to a notice of condemnation issued by the County, his client boarded up the structure and had it demolished. Mr. Gordon stated that the structure could have been renovated if it had not been demolished, but that his client did not know that at the time. He stated that the only way to make this lot buildable again is to first obtain the necessary variance relief, and then go through the subdivision and record plat processes at the Planning Department. Mr. Gordon stated that a new single-family dwelling can be constructed on the subject property that meets the R-200 setbacks, but that his client needs to create a record lot before he can build on the property. He noted that nearby surrounding properties were developed using the R-60 standards.

Mr. Gordon stated that the subject property has a long and narrow shape, and that while this is similar to properties to the immediate north and south of the subject property, other properties on Strawberry Knoll Road were developed under the R-60 development

standards. He stated that any new single family dwelling allowed to be built on the subject property would be compatible with the existing development. Mr. Gordon stated that there are townhouses to the west of the subject property (i.e. across Strawberry Knoll Road), and that there are subdivisions north and south of the subject property that were developed under the optional method using the R-60 development standards which allows for smaller lot sizes, despite being in the R-200 Zone.

In response to a Board question, Mr. Gordon stated that the subject property was larger than 20,000 square feet before the two previous subdivisions, which he noted would be illegal today. He stated that the 1957 aerial photograph, in the record at Exhibit 3(i), shows that the property was originally developed with a house.

Mr. Gordon stated that because of required dedications during the subdivision process and because of changes to the development of other properties, the size of the property could be further reduced, and the location of the property's front building line could change. He stated that this may impact the extent of the variances needed. Because the extent of these potential changes is unknown at this point, Mr. Gordon asked the Board for flexibility.³

14. In response to a question from the Board asking if he had received any feedback from his neighbors, the Petitioner testified that he had gone "knocking on the doors" of the houses around his property to discuss the Notice of hearing, and that he was not aware of any objections.

15. Mr. Tidd testified that he had attempted to estimate the required dedication based on dedications that were required of surrounding properties. He testified that the requested 22.4 foot lot width variance was based on what he assumed would be the required dedication for the subject property and a 40 foot front setback.

CONCLUSIONS OF LAW

Based on the 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 59.7.3.2.E.2 of the Zoning Ordinance, as follows:

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

³ The Board appreciates the predicament facing Mr. Gordon and his client, but notes that it cannot grant variances that are larger than the variances recited in the hearing Notice. If it ultimately turns out that following the subdivision and record plat processes, as a result of required public dedications or changes to the location of the front building line (and thus the lot width at the front building line), the Petitioner needs larger/more extensive variances than were granted by the Board, the Petitioner will have to return to the Board to seek an amendment of this decision.

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

The Board finds, based on the Statement, Site Plan, Zoning Vicinity Map, and statements of Mr. Gordon, that the subject property is long and abnormally narrow for its size, and has an unusual development history that resulted in the reduction of its size from a size that comported with development standards of the Zoning Ordinance to a size that does not meet the minimum lot size and width requirements set forth in the Zoning Ordinance, through a series of transactions that counsel has indicated would not be legal today. In addition, the Board finds that the property was previously developed with a house that could have been renovated by the Petitioner had the previous owner not allowed the condition of the house to deteriorate to the point that it was deemed uninhabitable and was condemned by the County. See Exhibits 3, 4, 6, and 7. The Board finds that these attributes, taken together, constitute an exceptional condition peculiar to the property, in satisfaction of this element of the variance test. See Exhibit 3.

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

The Board finds that the substandard size and width of the subject property are the result of conveyances that took place prior to the 2010 acquisition of the property by the Petitioner. The Board further finds that the uninhabitable condition of the house on the property when he assumed ownership, and its subsequent condemnation, were similarly not due to actions of the Petitioner. Thus the Board finds that the special circumstances or conditions are not the result of actions taken by the Petitioner, 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;*

The Board finds, based on the Statement and the representations of Mr. Gordon, that the subject property—which was improved with a single family dwelling when it was purchased by the Petitioner—is currently not considered a buildable lot, and that per the Maryland-National Capital Park and Planning Commission, in order for the property to be considered a buildable record lot, the Petitioner must first obtain the requested variances from the minimum lot size and width at the front building line, and then must go through the subdivision and record plat processes at the Planning Department. See Exhibit 3. The Board finds that the inability of the Petitioner to construct a new dwelling on this property without variance relief causes him a practical difficulty. The Board further finds that the requested variances, which are necessitated by the current size and configuration of the subject property, are the minimum necessary to allow the Petitioner to proceed with the remaining steps needed to render his property buildable. Accordingly, the Board finds that this element of the variance test is satisfied.

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; and

The Board finds, based on the Statement, that granting the requested variances “will further and advance the intent and integrity of both Thrive 2050 and the Master Plan by allowing for construction of a single-family dwelling that reinforces the traditional development pattern of the adjacent homes developed under the R-60 Zone standards.” Thus the Board finds that this element of the variance test is satisfied.

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, based on the Statement and the representations of Mr. Gordon, that granting the requested variances will allow the Petitioner to move forward with his efforts to render the subject property once again buildable, so that he can proceed with construction of a new single family dwelling on the property that will meet the setbacks of the R-200 Zone, will “meet[] or exceed[] the setbacks established for the neighboring homes to the north and south,” and will “adhere[] to the traditional development pattern along the eastern side of Strawberry Knoll Road.” See Exhibit 3. In addition, the Board finds that the Petitioner knocked on his neighbors’ doors to make them aware of his request, and that he was unaware of any concerns. Finally, the Board notes that the property was properly posted, that the record contains no written objections to the grant of the requested variances, and that the neighbors who attended the hearing did not express any opposition to the grant of the requested variances. In light of the foregoing, the Board finds that this element of the variance test is satisfied.

Accordingly, the requested variances from the minimum required lot area and the minimum lot width at the front building line are **granted**, subject to the following condition:

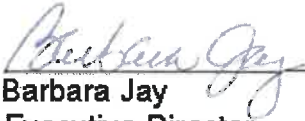
- 1. Petitioner shall be bound by the testimony and exhibits of record.

Therefore, based upon the foregoing, on a motion by Alan Sternstein, seconded by Amit Sharma, with Caryn Hines, Chair, Richard Melnick, Vice Chair, and Donald Silverstein 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.


Caryn L. Hines, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of November, 2024.



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.